

25-49  
No. 12030

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United States  
Court of Appeals  
for the Ninth Circuit

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EWELL TOOBERT,

Appellant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of  
the Housing Expediter,

Appellee.

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Transcript of Record

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Appeal from the District Court of the United States  
for the Southern District of California,  
Central Division

OCT 27 1948

PAUL P. O'BRIEN,

CLERK



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# INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

PAGE

Answer of Ewell Toobert to First Amended Complaint .....	8
Appeal:	
Certificate of Clerk to Transcript of Record on .....	46
Designation of Record on (DC).....	44
Notice of .....	37
Orders Extending Time to Docket.....	40, 46
Statement Accompanying Cash Deposit in Lieu of Bond on.....	38
Statement of Points on (DC).....	41
Statement of Points on Which Appellant In- tends to Rely on (USCA).....	164
Certificate of Clerk to Transcript of Record on Appeal .....	46
Complaint for Restitution and Injunction, First Amended .....	2
Designation of Record on Appeal (DC).....	44
Findings of Fact and Conclusions of Law....	23
Judgment .....	31
Motion for New Trial.....	35
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	37
Notice of Entry of Judgment.....	34

	PAGE
Order Denying Motion for New Trial.....	36
Orders Extending Time to Docket Appeal..	40, 46
Request for Admissions, Plaintiff's.....	11
Statement Accompanying Cash Deposit in Lieu of Undertaking for Costs on Appeal.....	38
Statement in Reply to Plaintiff's Request for Admissions .....	18
Statement of Points on Appeal (DC).....	41
Statement of Points on which Appellant In- tends to Rely on Appeal (USCA).....	164
Transcript of Proceedings .....	48

Witnesses for Defendant:

Hammond, Jack C.

—direct .....	124
—cross .....	128
—rebuttal, direct .....	148

Toobert, Ewell

—direct .....	129
—cross (Mr. Hirst).....	134
—cross (Mr. Sinclair) .....	144
—redirect .....	140
—recross .....	141

## Witnesses for Plaintiff:

## Coleman, Ernestine

—direct .....	75
—cross (Mr. Sinclair) .....	79
—cross (Mr. Downing) .....	79
—rebuttal, direct .....	153
—cross .....	154

## Davis, Ethel

—direct .....	93, 102
—cross (Mr. Sinclair) .....	99
—cross (Mr. Johnson) .....	100
—rebuttal, direct .....	155
—cross .....	156

## Felder, Leana

—direct .....	103
---------------	-----

## Gassaway, Jeffery

—direct .....	69
—cross .....	71
—rebuttal, direct .....	150

## Hammond, Jack C. (Adverse)

—direct .....	104
—cross (Mr. Sinclair) .....	112
—cross (Mr. Downing) .....	113
—cross (Mr. Hirst) .....	119

## Hildreth, Pearl

—direct .....	71
—cross .....	73, 74
—rebuttal, direct .....	152
—cross .....	153

## Witnesses for Plaintiff—(Cont'd)

## Patrick, Ida Mae

—direct .....	49
—cross (Mr. Sinclair) .....	62
—cross (Mr. Johnson).....	66
—redirect .....	65, 68
—rebuttal, direct .....	149

## White, Berdie Mae

—direct .....	81
—cross (Mr. Sinclair) .....	91
—cross (Mr. Johnson).....	93
—redirect .....	92
—rebuttal, direct .....	154
—cross .....	155

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

GEORGE W. DOWNING, JR.,  
650 S. Grand Ave.,  
Los Angeles 14, Calif.

For Appellee:

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
1206 Santee St.,  
Los Angeles 15, Calif. [1\*]

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\* Page numbering appearing at foot of page of original  
certified Transcript of Record.



In the District Court of the United States for the  
Southern District of California,  
Central Division

No. 7824-BH

TIGHE E. WOODS, Acting Housing Expediter,  
Office of the Housing Expediter,  
Plaintiff,

vs.

EWELL TOOBERT, JACK HAMMOND and  
WILLIAM H. HALL, DOE I and DOE II,  
Defendants.

FIRST AMENDED COMPLAINT FOR RESTI-  
TUTION AND INJUNCTION

FOR A FIRST CAUSE OF ACTION

I.

Plaintiff as Acting Housing Expediter, Office of the Housing Expediter, brings this cause of action for restitution pursuant to Section 205(a) to enforce compliance with Section 4 of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq.; and the Rent Regulations (10 Fed. Reg. 13528) issued by the Administrator pursuant to Section 2 of the Emergency Price Control Act of 1942, as amended, and/or brings this cause of action pursuant to Sec. 206 of the Housing and Rent Act of 1947, the Rent Regulations issued pursuant thereto.

## II.

Jurisdiction of this cause of action is conferred upon this Court by Sections 205(c) of the Emergency Price Control Act of 1942, as amended, [2] and/or Section 206 of the Housing and Rent Act of 1947.

## III.

At all times mentioned herein, up to and including June 30, 1947, there was in effect a Rent Regulation for Housing issued pursuant to Section 2(b) of the Emergency Price Control Act of 1942, as amended, for the Los Angeles Defense Rental Area, and/or on and since July 1, 1947 the housing accommodations herein described have been subject to maximum rents authorized and established by the Housing and Rent Act of 1947, and rent regulations issued pursuant thereto.

## IV.

That the defendants, Doe I and Doe II, are the fictitious names of the defendants, whose true names are to this plaintiff unknown, and plaintiff asks that when these true names are discovered this complaint may be amended by inserting such true names in the place and stead of such fictitious names. Wherever the word "defendant" is used in this complaint, it shall include all of the defendants individually and collectively herein sued.

## V.

That the defendant is a resident of the City of Los Angeles, County of Los Angeles, State of Cali-

fornia, in the Southern District of California, in the Central Division thereof, and within the jurisdiction of this Court.

## VI.

During all times herein mentioned defendant has received rent for the use and occupancy of those certain housing accommodations, subject to said Acts and Regulations within said Defense Rental Area, known and described as 422, 422 $\frac{1}{4}$ , 422 $\frac{3}{4}$  and 424 East 15th Street, Los Angeles, California.

## VII.

Defendant received from persons for the use and occupancy of the hereinafter described accommodations rents in excess of the maximum rents established by said Rent Regulations; that there is attached hereto and by [3] reference made a part hereof, as though fully set out herein, a statement of the names of the persons overcharged, the period of occupancy of such persons, the maximum rent, the rent received from said persons, and the amount of overcharges.

## FOR A SECOND CAUSE OF ACTION

### I.

Plaintiff re-alleges and incorporates herein Paragraphs I, II, III, IV, V, VI and VII of his first cause of action as though set out in full herein.

### II.

In the judgment of the Housing Expediter, Office of the Housing Expediter, said defendants have



engaged in acts and practices in violation of Section 4(a) of the Emergency Price Control Act of 1942, as amended, USCA Title 50, App. Sec. 901 et seq., and/or in violation of Section 206(a) of the Rent and Housing Act of 1947, which acts and practices consist of violations of Rent Regulations for Housing (10 Fed. Reg. 13528) issued in accordance with Section 2(b) of the Emergency Price Control Act of 1942, as amended, and/or the Housing Regulation issued pursuant to the Housing and Rent Act of 1947, and therefore the Housing Expediter brings this cause of action pursuant to the provisions of Section 206 of the Housing and Rent Act of 1947. Jurisdiction of this cause is conferred by Section 206 of the Housing and Rent Act of 1947.

Wherefore, the plaintiff demands:

A. That the defendant be ordered and directed to tender to all available tenants as are entitled thereto a refund of all amounts in excess of the maximum rents established by the Emergency Price Control Act of 1942, as amended, and Regulations issued thereunder, and/or the Housing and Rent Act of 1947, and Regulations issued thereunder, which were received by the defendant, his agents, servants, employees and attorneys from said persons as rent for the use and occupancy of the housing accommodations described in the complaint, since the date maximum rents were established therefor by [4] said Acts and said Regulations.

B. A preliminary and final injunction enjoining the defendants, their agents, servants, employ-

ees, and all persons in active concert or participation with them from directly or indirectly demanding or receiving for accommodations subject to the Rent Regulations issued pursuant to the Housing and Rent Act of 1947, rents in excess of the maximum rents permitted under the Rent Regulations issued pursuant to the Housing and Rent Act of 1947.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,

By /s/ ABE I. LEVY,  
Attorneys for Plaintiff. [5]

Housing accommodations located at 422, 422<sup>1</sup>/<sub>4</sub>, 422<sup>3</sup>/<sub>4</sub> and 424 East 15th Street, Los Angeles, California.

Unit	Name of Tenant	Period of Overcharges	Amount Rent Paid	Maximum Legal Rent	Amount of Overcharges
422	Ida Mae Patrick.....	10/26/45- 8/26/47	\$40.00 Mo.	\$18.00 Mo.	\$462.00
422	Ida Mae Patrick.....	9/26/47-12/26/47	20.00 Mo.	18.00 Mo.	6.00
422 <sup>1</sup> / <sub>4</sub>	Jeffery Gasaway.....	9/13/45- 4/ 7/46	40.00 Mo.	18.00 Mo.	154.00
422 <sup>1</sup> / <sub>4</sub>	Pearl Hildreth.....	4/ 7/46- 7/ 9/47	40.00 Mo.	18.00 Mo.	330.00
422 <sup>1</sup> / <sub>4</sub>	Pearl Hildreth.....	7/10/47- 1/10/48	20.00 Mo.	18.00 Mo.	12.00
422 <sup>1</sup> / <sub>4</sub>	Ernestine Coleman.....	7/13/45- 9/13/45	42.00 Mo.	18.00 Mo.	72.00
422 <sup>3</sup> / <sub>4</sub>	Ernestine Coleman.....	9/14/45- 7/14/47	40.00 Mo.	18.00 Mo.	462.00
422 <sup>3</sup> / <sub>4</sub>	Ernestine Coleman.....	7/14/47- 1/14/48	20.00 Mo.	18.00 Mo.	12.00
424	Upper Berdie Mae White.....	10/ 7/46-11/ 7/46	40.00 Mo.	16.00 Mo.	24.00
	Front.....	11/ 7/46- 8/ 7/47	40.00 Mo.	16.00 Mo.	216.00
424	Upper Ethel Davis.....	1/16/46- 8/16/47	40.00 Mo.	12.00 Mo.	504.00
	Rear				
Total.....					\$2,254.00

Statement referred to in Paragraph VII of Plaintiff's First Cause of Action.

[Endorsed]: Filed Dec. 17, 1947.

Tighe E. Woods

[Title of District Court and Cause.]

ANSWER OF THE DEFENDANT EWELL  
TOOBERT TO FIRST AMENDED  
COMPLAINT

Comes now the defendant Ewell Toobert and for himself alone, in answer to the first cause of action of plaintiff's amended complaint, admits, denies and alleges as follows:

I.

This defendant denies the allegations of paragraphs I and II of said first cause of action.

II.

This defendant denies each and all the allegations of paragraphs VI and VII of said first cause of action; in this connection this defendant denies that he has received all or any part whatsoever of the alleged rent referred to in said paragraph VII and in the itemized statement referred to therein as having been paid to this defendant and this defendant further denies that he has received all or any part whatsoever of the [7] alleged rent or overcharges set forth in the itemized statement referred to in said paragraph VII and attached to said complaint.

In answer to the second cause of action of plaintiff's amended complaint this defendant admits, denies and alleges as follows:

I.

This defendant repeats and incorporates herein the denials contained in paragraphs I and II of his foregoing answer to the first cause of action of



plaintiff's amended complaint to the same extent as if said denials were set out in full herein.

## II.

Denies that this defendant has ever engaged in any act or practice in violation of Section 4(a) or any other provisions of the Emergency Price Control Act of 1942, as amended or otherwise and/or in violation of Section 206(a) or any other provisions of the Rent and Housing Act of 1947 and/or any Rent Regulations issued in accordance with or pursuant to either of said Acts.

Further answering Plaintiff's amended complaint and as a separate and affirmative answer and defense to said complaint and to each of the causes of action therein contained this defendant alleges as follows:

### I.

That each and all of the alleged overcharges or moneys paid in excess of the maximum legal rent to this defendant, if any such there ever were, were paid prior to December 4, 1946, and were paid more than one year before the commencement of this action.

Further answering said amended complaint and as a separate and affirmative answer and defense [8] to said amended complaint and to each of the causes of action therein contained this defendant alleges as follows:

### I.

That any action against him on the part of this suing plaintiff for any alleged overcharges of rental

collected on the premises described in the complaint is barred by the provisions of Section 205(e) of the Emergency Price Control Act of 1942, and the Rent and Housing Act of 1947.

Further answering said amended complaint and as a separate, affirmative answer and defense to said amended complaint and to each of the causes of action therein contained this defendant alleges as follows:

I.

That each and all of the alleged overcharges or moneys paid in excess of the maximum legal rent to this defendant, if any such there were, were paid prior to December 17, 1946, and were paid more than one year before the commencement of this action.

Further answering said amended complaint and as a separate, affirmative answer and defense to said amended complaint and to each of the causes of action therein contained this defendant alleges as follows:

I.

As to each and all of the alleged payments of rent in excess of the maximum legal rent alleged in paragraph VII of said Amended Complaint and the statement attached thereto which were made more than one year prior to the commencement of this [9] action, this defendant alleges that because the same were made more than one year before the commencement of this action that recovery thereof or

any recovery based thereon is barred by the statute of limitations.

Wherefore, this defendant prays that plaintiff take nothing against him and that he have judgment for his costs incurred herein.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant  
Ewell Toobert.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Jan. 17, 1947. [10]

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[Title of District Court and Cause.]

PLAINTIFF'S REQUEST FOR ADMISSIONS  
PURSUANT TO RULE 36

Plaintiff, pursuant to Rule 36 of the Federal Rules of Civil Procedure, requests the defendants, Ewell Toobert, Jack Hammond and William H. Hall, within ten (10) days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That, at all times material to this action, the defendant Ewell Toobert was the landlord of the housing accommodations located at 422, 422 $\frac{1}{4}$ , 422 $\frac{3}{4}$  and 424 East 15th Street, City of Los Angeles, County of Los Angeles, State of California.

2. That, at all times material to this action, the defendant Jack Hammond acted in the capacity of agent for the defendant Ewell Toobert.



3. That, during all or part of the time material to this action, the defendant William H. Hall acted in the capacity of agent for the defendant Ewell Toobert.

4. That the said premises are within the Los Angeles Defense [12] Rental Area.

5. That said premises, at all times material to this action, are and were subject to the Rent Regulation for Housing, as amended, (10 F. R. 13528).

6. That jurisdiction of this action is conferred upon this Court by Section 205(c) of the Emergency Price Control Act of 1942, as amended, (Pub. Law 421, 77th Cong. 2nd Sess. 56 Stat. 23, 50 USCA App. 901 et seq.), and Section 206 of the Housing and Rent Act of 1947.

7. That on or about November 1, 1942, certificates of registration of rental units located at 422, 422 $\frac{1}{4}$ , 422 $\frac{3}{4}$  and 424 Upper Front and Upper Rear, East 15th Street, City of Los Angeles, State of California, were filed with the Office of Price Administration. A copy of each Certificate of registration is attached hereto, marked Exhibits "A", "B", "C", "D" and "E". The original of each of said certificates of registration is on file with the Rent Litigation Unit of the Office of Rent Control, Office of the Housing Expediter, and is available for examination by the defendant or his attorney.

8. That the attached Exhibits "A", "B", "C", "D" and "E" are true copies, in words, figures and substance, of said certificates.

9. That the certificates, of which attached Exhibits "A", "B", "C", "D" and "E" are true copies, are genuine.



10. That said certificates establish the maximum rent, *prima facie*, for the housing accommodations herein described, for all times material to this suit.

11. That said certificates of registration are official records of the Office of Rent Control.

12. That one, Ida Mae Patrick, used and occupied the housing accommodation located at 422 East 15th Street, Los Angeles, California, for the period commencing October 26, 1945 and ending August 26, 1947.

13. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Ida Mae Patrick, as rent for the use and occupancy of the housing [13] accommodations located at 422 East 15th Street, City of Los Angeles, State of California, the sum of \$40.00 for each month during the period commencing October 26, 1945 and ending August 26, 1947.

14. That one, Ida Mae Patrick, used and occupied the housing accommodations located at 422 East 15th Street, City of Los Angeles, State of California, for the period commencing September 26, 1947, and ending December 26, 1947.

15. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Ida Mae Patrick, as rent for the use and occupancy of said housing accommodation located at 422 East 15th Street, City of Los Angeles, State of California, the sum of \$20.00 for each month during the period commencing September 26, 1947 and ending December 26, 1947.

16. That one, Jeffrey Gasaway, used and occupied the housing accommodation located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, for the period commencing September 13, 1945 and ending April 7, 1946.

17. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Jeffrey Gasaway, as rent for the use and occupancy of said housing accommodations located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, the sum of \$40.00 for each month during the period commencing September 15, 1945 and ending April 7, 1946.

18. That one, Pearl Hildreth, used and occupied the housing accommodation located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, for the period commencing April 7, 1946, and ending July 9, 1947.

19. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Pearl Hildreth, as rent for the use and occupancy of said housing accommodation located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, the sum of \$40.00 for each month during the period [14] commencing April 7, 1946 and ending July 9, 1947.

20. That one, Pearl Hildreth, used and occupied the housing accommodation located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, for the period commencing July 10, 1947 and ending January 10, 1948.

21. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Pearl Hildreth, as rent for the use and occupancy of said housing accommodation located at 4221½ East 15th Street, City of Los Angeles, State of California, the sum of \$20.00 for each month during the period commencing July 10, 1947 and ending January 10, 1948.

22. That one, Ernestine Coleman, used and occupied the housing accommodation located at 4221¼ East 15th Street, City of Los Angeles, State of California, for the period commencing July 13, 1945 and ending September 13, 1945.

23. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Ernestine Coleman, as rent for the use and occupancy of said housing accommodation located at 4221¼ East 15th Street, City of Los Angeles, State of California, the sum of \$42.00 for each month during the period commencing July 13, 1945 and ending September 13, 1945.

24. That one, Ernestine Coleman, used and occupied the housing accommodation located at 4223¼ East 15th Street, City of Los Angeles, State of California, for the period commencing September 14, 1945, and ending July 14, 1947.

25. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Ernestine Coleman, as rent for the use and occupancy of said housing accommodation located at 4223¼ East 15th Street, City of Los An-



geles, State of California, the sum of \$40.00 for each month during the period commencing September 14, 1945 and ending July 14, 1947.

26. That one, Ernestine Coleman, used and occupied the housing [15] accommodation located at 422 $\frac{3}{4}$  East 15th Street, City of Los Angeles, State of California, for the period commencing July 14, 1947 and ending January 14, 1948.

27. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Ernestine Coleman, as rent for the use and occupancy of said housing accommodation located at 422 $\frac{3}{4}$  Est 15th Street, City of Los Angeles, State of California, the sum of \$20.00 for each month during the period commencing July 14, 1947 and ending January 14, 1948.

28. That one, Birdie Mae White, used and occupied the housing accommodation located at 424 East 15th Street, 2nd Floor Front, in the City of Los Angeles, State of California, for the period commencing October 7, 1946 and ending August 7, 1947.

29. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Birdie Mae White, as rent for the use and occupancy of said housing accommodation located at 424 East 15th Street, 2nd Floor Front, in the City of Los Angeles, State of California, the sum of \$40.00 for each month during the period commencing October 7, 1946 and ending August 7, 1947.

30. That one, Ethel Davis, used and occupied the housing accommodation located at 424 East 15th Street, 2nd Floor Rear, in the City of Los Angeles, State of California for the period commencing January 16, 1946, and ending August 16, 1947.

31. That defendant, Ewell Toobert, either personally or through his agents, Jack Hammond and/or William H. Hall, demanded and received from said Ethel Davis, as rent for the use and occupancy of said Ethel Davis, as rent for the use and occupancy of said housing accommodation located at 424 East 15th Street, 2nd Floor Rear, in the City of Los Angeles, State of California, the sum of \$40.00 for each month during the period commencing January 16, 1946 and ending August 16, 1947.

32. That as of the date of filing this suit more than 30 days had elapsed since the demand and receipt of rent and the tenants above [16] named have not instituted any action against the defendants pursuant to Section 205(e) of the Emergency Price Control Act of 1942, as amended, prior to the institution of this suit.

Dated: Los Angeles, California, this 18th day of February, 1948.

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,  
RICHARD G. SOLOF,  
ASHER SCHEIR,

By /s/ ASHER SCHEIR.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 19, 1948. [17]

[Title of District Court and Cause.]

DEFENDANT'S STATEMENT IN REPLY TO  
PLAINTIFF'S REQUEST FOR ADMISSIONS

Comes now the defendant Ewell Toobert and for himself alone and not for any of his co-defendants, makes the following answer and reply containing both admissions, statements and denials to the Plaintiff's Request for Admissions Pursuant to Rule 36 heretofore served on this defendant:

1. Denies that, at all times material to this action or at any time or at all, the defendant Ewell Toobert was the landlord of the housing accommodations located at 422, 422 $\frac{1}{4}$ , 422 $\frac{3}{4}$  and 424 East 15th Street, City of Los Angeles, County of Los Angeles, State of California, or of either or any of the above described premises.

2. Denies that, at all times material to this action or at any other time or at all, the defendant Jack Hammond acted in the [24] capacity of agent for the defendant Ewell Toobert.

3. Denies that, during all or part of the time material to this action or at any other time or at all, the defendant William H. Hall acted in the capacity of agent for the defendant Ewell Toobert.

4. ———

5. ———

6. Denies that jurisdiction of this action is conferred upon this Court by Section 205(c) of the Emergency Price Control Act of 1942, as amended,



and/or Section 206 of the Housing and Rent Act of 1947 or by any other statute or at all.

7. —
8. —
9. —
10. —
11. —

This defendant is not and never was the landlord of any of the premises referred to in plaintiff's aforesaid request, and this defendant does not have and never has had any knowledge or information whatsoever of or concerning the occupants of said premises or any of them at any time whatsoever and this defendant is therefore wholly unable to admit or deny the truth of the allegations contained in that portion of plaintiff's aforesaid request designated as paragraphs Nos. 12, 14, 16, 18, 20, 22, 24, 26, 28 and 30.

13. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Ida Mae Patrick, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 422 East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$40.00 or any other sum, for each month or for any period [25] during the period commencing October 26, 1945, and ending August 26, 1947, or any other period or at all.

15. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them,

demanded and/or received from Ida Mae Patrick, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 422 East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$20.00 or any other sum, for each month or for any period during the period commencing September 26, 1947, and ending December 26, 1947.

17. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Jeffrey Gasaway, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$40.00 or any other sum, for each month or for any period during the period commencing September 13, 1945 and ending April 7, 1946.

19. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Pearl Hildreth, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 422 $\frac{1}{4}$  East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$40.00 or any other sum, for each month or for any period during the period commencing April 7, 1946 and ending July 9, 1947.

21. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, de-



manded and/or received from Pearl Hildreth, or any other person, as rent for the use and/or occupancy of the [26] housing accommodation located at 4221½ East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$20.00 or any other sum, for each month or for any period during the period commencing July 10, 1947, and ending January 10, 1948.

23. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Ernestine Coleman, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 4221¼ East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$42.00 or any other sum, for each month or for any period during the period commencing July 13, 1945, and ending September 13, 1945.

25. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Ernestine Coleman, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 422¾ East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$40.00 or any other sum, for each month or for any period during the period commencing September 14, 1945, and ending July 14, 1947.

27. Denies that this defendant, either personally or through his purported agents, Jack Ham-

mond and/or William H. Hall, or either of them, demanded and/or received from Ernestine Coleman, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 422 $\frac{3}{4}$  East 15th Street, City of Los Angeles, State of California, or any other premises, the sum of \$20.00, or any other sum, for each month or for any period during the period commencing July 14, 1947, and ending January 14, 1948. [27]

29. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Birdie Mae White, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 424 East 15th Street, 2nd Floor Front, in the City of Los Angeles, State of California, or any other premises, the sum of \$40.00 or any other sum, for each month or for any period during the period commencing October 7, 1946 and ending August 7, 1947.

31. Denies that this defendant, either personally or through his purported agents, Jack Hammond and/or William H. Hall, or either of them, demanded and/or received from Ethel Davis, or any other person, as rent for the use and/or occupancy of the housing accommodation located at 424 East 15th Street, 2nd Floor Rear, in the City of Los Angeles, State of California, or any other premises, the sum of \$40.00, or any other sum, for each month or for any period during the period commencing January 16, 1946 and ending August 16, 1947.

This defendant here specifically alleges that at no time did he ever, either personally or through any agent whomsoever, collect or receive any rent whatsoever from any person whomsoever covering any of the premises referred to in plaintiff's aforesaid request at any period of time whatsoever.

32. Denies that as of the date of filing this suit or any other time, more than thirty days or any other period has elapsed since the alleged demand and/or receipt of rent on the part of this defendant for the reason that this defendant has never demanded or received any such rent.

Dated at Los Angeles, California, this 27th day of February, 1948.

/s/ EWELL TOOBERT,  
Defendant.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

(Duly Verified.)

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Mar. 1, 1948. [28]

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Plaintiff having filed his first amended complaint, and the defendants, Ewell Toobert and Jack Hammond, having filed their answer thereto, and the matter having come on for trial on the 22nd



and 23rd days of March, 1948, before the Honorable Charles C. Cavanah, presiding without a jury, a jury having been waived by the parties herein, and the plaintiff being represented by Frank L. Hirst, Esq., and said defendant, Ewell Toobert, being represented by George W. Downing, Jr., Esq., and the defendant, Jack Hammond, being represented by Harold J. Sinclair, Esq., and the defendant, William H. Hall, being represented by Ivan J. Johnson, Esq., and both oral and documentary evidence having been introduced, and the court having made its [30] order dismissing said action as to defendant, William H. Hall, and being fully advised in the premises, the court now makes the following

### FINDINGS OF FACT

1. That the plaintiff as Housing Expediter, Office of the Housing Expediter, is the proper party plaintiff duly authorized to bring this action under and pursuant to the Emergency Price Control Act of 1942, as amended, and the Housing and Rent Act of 1947, as amended.

2. That this court has jurisdiction of the defendants, Ewell Toobert and Jack Hammond, and of the subject matter of this action.

3. That at all times pertinent to this action the Rent Regulation for Housing, issued pursuant to Section 2(a) of the Emergency Price Control Act of 1942, and the Controlled Rent Regulation for Housing, issued pursuant to the Housing and Rent Act of 1947, as amended, were in full force and effect in the Los Angeles Defense Rental Area.

4. That said defendants, Ewell Toobert and Jack Hammond, at all times pertinent to this action were residents of the City of Los Angeles, County of Los Angeles, State of California.

5. That for the period of time extending from July 13, 1945, to and including September 1, 1947, said defendants, Ewell Toobert and Jack Hammond, were the landlords within the meaning of said term as defined in Section 13(a)(8) of the Rent Regulation for Housing, and Section 1 of the Controlled Housing Rent Regulation, of the housing accommodations designated as 422, 422 $\frac{1}{4}$ , 422 $\frac{3}{4}$ , 424 upper front and 424 upper rear, East 15th Street, Los Angeles, California, and located within said Defense Rental Area, said accommodations being subject to said [31] Rent Regulation for Housing and said Controlled Housing and Rent Regulation.

6. That for the period extending from September 1, 1947, to January 14, 1948, said defendant, Jack Hammond, was the landlord of said housing accommodations referred to in Paragraph 5, immediately above.

7. That for the period extending from October 26, 1945, to August 26, 1947, exclusive of the period extending from July 1, 1946, to July 26, 1946, inclusive, defendants Ewell Toobert and Jack Hammond, as landlords, demanded and received from Ida Mae Patrick the sum of \$40.00 per month as rent for the use and occupancy of said housing accommodations located at 422 East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the

sum of \$18.00 per month, amounting to a total overcharge of \$462.00.

8. That for the period extending from September 26, 1947, to December 26, 1947, said defendant, Jack Hammond, as landlord demanded and received from Ida Mae Patrick the sum of \$20.00 per month as rent for the use and occupancy of said housing accommodations located at 422 East 15th Street, Los Angeles, California; whereas; the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to an overcharge of \$6.00.

9. That for the period extending from September 21, 1945, to April 10, 1946, defendants Ewell Toobert and Jack Hammond, as landlords, demanded and received from Jeffery Gasaway the sum of \$40.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{1}{4}$  East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$132.00.

10. That for the period extending from April 10, 1946, to [32] July 9, 1947, exclusive of the period extending from July 1, 1946, to July 26, 1946, inclusive, defendants Ewell Toobert and Jack Hammond, as landlords, demanded and received from Pearl Hildreth the sum of \$40.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{1}{4}$  East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the



sum of \$18.00 per month, amounting to a total overcharge of \$330.00.

11. That for the period extending from July 10, 1947, to September 10, 1947, said defendants, Ewell Toobert and Jack Hammond, as landlords, demanded and received from Pearl Hildreth the sum of \$20.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{1}{4}$  East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$4.00.

12. That for the period extending from September 10, 1947, to January 10, 1948, said defendant Jack Hammond, as landlord, demanded and received from Pearl Hildreth the sum of \$20.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{1}{4}$  East 15th Street, Los Angeles, California; whereas the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$8.00.

13. That for the period extending from July 13, 1945, to September 13, 1945, said defendants, Ewell Toobert and Jack Hammond, demanded and received from Ernestine Coleman the sum of \$42.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{1}{4}$  East 15th Street, Los Angeles, California; whereas the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$48.00. [33]

14. That for the period extending from September 14, 1945, to July 14, 1947, exclusive of the period extending from July 1, 1946, to July 26, 1946, inclusive, said defendants, Ewell Toobert and Jack Hammond, as landlords, demanded and received from Ernestine Coleman the sum of \$40.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{3}{4}$  East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$462.00.

15. That for the period extending from July 14, 1947, to September 14, 1947, said defendants, Ewell Toobert and Jack Hammond, as landlords, demanded and received from Ernestine Coleman the sum of \$20.00 per month as rent for the use and occupancy of said housing accommodations located at 422 $\frac{3}{4}$  East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$4.00.

16. That for the period extending from September 14, 1947, to January 14, 1948, said defendants, Jack Hammond, as landlord, demanded and received from Ernestine Coleman the sum of \$20.00 per month for the use and occupancy of said housing accommodations located at 422 $\frac{3}{4}$  East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$18.00 per month, amounting to a total overcharge of \$8.00.

17. That for the period extending from October



7, 1946, to August 7, 1947, said defendants, Ewell Toobert and Jack Hammond, demanded and received from Berdie Mae White the sum of \$40.00 per month as rent for the use and occupancy of said housing accommodations located at 424 (upper front) East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$16.00 per month, [34] amounting to a total overcharge of \$240.00.

18. That for the period extending from January 16, 1946, to August 16, 1947, excluding the period extending from July 1, 1946, to July 26, 1946, inclusive, the defendants Ewell Toobert and Jack Hammond, as landlords, demanded and received from Ethel Davis the sum of \$40.00 per month as rent for the use and occupancy of said housing accommodations located at 424 (upper rear) East 15th Street, Los Angeles, California; whereas, the maximum legal rent for said housing accommodations was the sum of \$12.00 per month, amounting to a total overcharge of \$504.00.

From the above findings of fact the Court makes the following

#### CONCLUSIONS OF LAW

1. That the defendants Ewell Toobert and Jack Hammond violated Section 2(a) of the Rent Regulation for Housing, and Section 2(a) of the Controlled Housing Rent Regulation, and therefore have violated the provisions of the Emergency Price Control Act of 1942, and the Housing and Rent Act of 1947, as amended.

2. That said tenants referred to in Paragraph 7 to Paragraph 18, inclusive, are entitled to re-

funds in the amounts of the overcharges specified in said paragraphs. That the total amount of said refund is the sum of \$2008.00.

3. That said defendants, Ewell Toobert and Jack Hammond, are liable jointly and severally for the refunds of overcharges specified in Paragraphs 7, 9, 10, 11, 13, 14, 15, 17, and 18, of the above findings of fact; and the defendant, Jack Hammond, is liable individually for the refunds of overcharges specified in Paragraphs 8, 12 and 16, of the above findings of fact.

Dated this 7th day of April, 1948.

/s/ CHARLES C. CAVANAH

Judge, United States District Court. [35]

The foregoing Findings of Fact and Conclusions of Law are approved as to form:

ABE I. LEVY,

STEPHEN D. MONAHAN,

FRANK L. HIRST,

By /s/ FRANK L. HIRST,

Attorneys for Plaintiff.

GEORGE W. DOWNING, JR.,

Attorney for defendant,

Ewell Toobert.

HAROLD J. SINCLAIR,

Attorney for Defendant,

Jack Hammond.

/s/ IVAN J. JOHNSON,

Attorney for Defendant,

William H. Hall.

(Acknowledgment of Service.)

[Endorsed]: Filed April 7, 1948.

[36]

In the District Court of the United States,  
Southern District of California,  
Central Division

No. 7824-BH

TIGHE E. WOODS, Housing Expediter, Office of  
the Housing Expediter,

Plaintiff,

vs.

EWELL TOOBERT, JACK HAMMOND, and  
WILLIAM H. HALL, DOE I and DOE II,  
Defendants,

### JUDGMENT

The above entitled cause having come on for trial on the 22nd and 23rd days of March, 1948, before the Honorable Charles C. Cavanah, Judge presiding without a jury, a jury having been expressly waived, the plaintiff being represented by Frank L. Hirst, Esq., and the defendant, Ewell Toobert, being represented by George W. Downing, Jr., Esq., and the defendant, Jack Hammond, being represented by Harold J. Sinclair, Esq., and the defendant, William H. Hall, being represented by Ivan J. Johnson, Esq., and an Order having been made pursuant to stipulation of the parties hereto substituting Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, as plaintiff herein in place and stead of Tighe E. Woods, Acting Housing Expediter, Office of the Housing Expediter, and both oral and documentary evidence having been [37] introduced and the Court having



made its findings of fact and conclusions of law, and sufficient reasons appearing therefore,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the defendants, Ewell Toobert and Jack Hammond, and each of them, shall refund to the following named persons in the amounts indicated opposite their respective names:

Ida Mae Patrick	\$462.00
Jeffery Gasaway	132.00
Pearl Hildreth	334.00
Ernestine Coleman	514.00
Berdie Mae White	240.00
Ethel Davis	504.00

2. That the defendant, Jack Hammond, shall refund to the following named persons in the amounts indicated opposite their respective names:

Ida Mae Patrick	\$6.00
Pearl Hildreth	8.00
Ernestine Coleman	8.00

3. That said refunds referred to in Paragraphs 1 and 2, immediately above, shall be accomplished by the defendants delivering to the Office of the Housing Expediter, bank money orders, or certified or cashiers checks, in said specified amounts for transmittal to said persons entitled to said refunds.

4. That the Second Cause of Action of plaintiff's Complaint be and the same is hereby dismissed.

5. That plaintiff's Complaint be dismissed as to Defendants Doe I and Doe II.

6. That the above entitled action be and the same is hereby dismissed as to defendant, William H. Hall, with prejudice.

Dated this 7th day of April, 1948.

/s/ CHARLES C. CAVANAH,  
Judge, United States District Court. [38]

The foregoing Judgment is approved as to form:

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,

By /s/ FRANK L. HIRST,  
Attorneys for Plaintiff.

GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

HAROLD J. SINCLAIR,  
Attorney for Defendant,  
Jack Hammond.

/s/ IVAN J. JOHNSON,  
Attorney for Defendant,  
William H. Hall.

(Acknowledgment of Service.) [39]

[Endorsed]: Filed April 7, 1948.

United States District Court, Southern District of  
California, Central Division

NOTICE BY CLERK OF ENTRY OF  
JUDGMENT

Frank L. Hirst, Esq., Attorney at Law, Office  
of Housing Expediter, 1206 Santee St., Los An-  
geles 15, Calif.

George W. Downing, Jr., Esq., Attorney at Law,  
650 So. Grand Ave., Los Angeles 14, Calif.

Harold J. Sinclair, Esq., Attorney at Law, 1105  
East Vernon Ave., Los Angeles, Calif.

Ivan J. Johnson, III, Esq., Attorney at Law,  
1105 East Vernon Ave., Los Angeles, Calif.

Re: 7824-BH Civ. Tighe E. Woods, etc. vs. Ewell  
Toobert, Jack Hammond and William H. Hall.

You are hereby notified that Judgment has been  
entered this day in the above-entitled case, in  
Civil Order Book No. 50, page 71.

Dated Los Angeles, California, April 7, 1948.

EDMUND L. SMITH,

Clerk,

By /s/ MURRAY E. WIRE,

Deputy Clerk.

Findings of Fact and Conclusions of Law, filed  
this day.

MEW.

[Endorsed]: Filed April 7, 1948.

[40]



[Title of District Court and Cause.]

### MOTION FOR NEW TRIAL

Comes now the defendant Ewell Toobert, and for himself alone, moves the court to vacate and set aside that judgment entered herein on April 7, 1948, in Book 50 at page 71, so far as said judgment runs against or contains any provisions requiring payment of money by this defendant, and to grant to this defendant a new trial of the above entitled action, on the following grounds, to-wit:

1. That the Court erred in making Finding of Fact No. 3, in that there is not sufficient evidence to support said finding as against this defendant;

2. That the Court erred in making Findings of Fact Nos. 7, 9, 10, 11, 13, 14, 15, 17 and 18 in that there is not sufficient evidence to support said findings or any of them, as against this defendant. [41]

3. That the decision of the court is contrary to law, in that there is not sufficient evidence to support any judgment against this defendant.

4. That the decision of the court is contrary to law, in that the court has made findings of fact which are unsupported by the evidence.

5. That the judgment is contrary to law, in that there is no evidence in the record before the court that the defendant Ewell Toobert was ever the landlord of said premises as to the tenants listed in the Findings of Fact, or that the defendant Ewell Toobert ever demanded or received any rent whatsoever from any of said tenants.

6. That the judgment is contrary to law, in that the law does not authorize a judgment against the landlord's lessor for rent overcharges by such landlord.

Dated April 15, 1948.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 16, 1948.

[42]

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[Title of District Court and Cause.]

ORDER DENYING MOTION OF DEFEN-  
DANT EWELL TOOBERT FOR A  
NEW TRIAL

The defendant, Ewell Toobert, having filed his motion to vacate and set aside the judgment heretofore entered in the above entitled action and to grant said defendant, Ewell Toobert, a new trial, and said motions having come on for hearing in the above entitled court before the Honorable Charles C. Cavanah on the 22nd day of April, 1948, plaintiff being represented by Frank L. Hirst, Esq., and said defendant, Ewell Toobert, being represented by George W. Downing, Jr., Esq., and oral argument having been presented on behalf of both the plaintiff and said defendant, and the Court being fully advised in the premises,

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That the motion of the defendant, Ewell Toobert, to vacate and set aside the judgment entered herein be and the same [44] is hereby denied.

2. That the motion of said defendant, Ewell Toobert, for a new trial be and the same is hereby denied.

Dated this 23rd day of April, 1948.

/s/ CHARLES C. CAVANAH,  
Judge, United States District Court.

The foregoing Order is approved as to form:

ABE I. LEVY,  
STEPHEN D. MONAHAN,  
FRANK L. HIRST,

By /s/ FRANK L. HIRST,  
Attorneys for Plaintiff.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

[Endorsed]: Filed April 23, 1948. [45]

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[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS

Notice Is Hereby Given that Ewell Toobert, one of the defendants in the above-entitled action, does hereby appeal to the Circuit Court of Appeals for



the Ninth Circuit from that certain judgment entered herein on April 7, 1948, in favor of Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, and against defendants Ewell Toobert and Jack Hammond, and from the whole of said judgment.

Dated June 4, 1948.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

[Endorsed]: Filed June 5, 1948.

[46]

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[Title of District Court and Cause.]

STATEMENT ACCOMPANYING CASH  
DEPOSIT IN LIEU OF UNDERTAKING  
ON APPEAL

I, George W. Downing, Jr., residing at 1296 East Calaveras Street, Altadena, California, hereby deposit with the Clerk of the above-entitled court the sum of \$250.00, on behalf of the appellant Ewell Toobert herein, in lieu of the bond on appeal provided for under Rule 73(c) of the Rules of Civil Procedure.

I declare that I am the owner of said fund, and that it is deposited to take the place of such bond on appeal, and that said deposit secures the payment of costs awarded against the appellant Ewell Toobert if the appeal is dismissed or the judgment appealed from is affirmed, or such costs as the

appellate court may award if the judgment is modified.

Said fund is expressly subjected to all of the provisions of local rule 8(c) of said Court, and I expressly agree that in case of default or contumacy on the part of the appellant, the [47] Court may proceed summarily and execute upon said fund in accordance with the obligation of the appellant.

Dated June 5, 1948.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendants.

State of California,  
County of Los Angeles—ss.

On this 5th day of June, 1948, before me, B. Frank Hopkins, a Notary Public in and for the County of Los Angeles, State of California, personally appeared George W. Downing, Jr., known to me to be the person who subscribed the within instrument, and he acknowledged to me that he executed the same.

In Witness Whereof I have hereunto set my hand and seal the day and year in this certificate first above written.

(Seal) /s/ B. FRANK HOPKINS,  
Notary Public in and for said County and State.

[Endorsed]: Filed June 5, 1948.

[48]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE  
RECORD ON APPEAL AND  
DOCKET ACTION

Good cause appearing from the affidavit of George W. Downing, Jr., made and filed herein,

It Is Hereby Ordered that the time for filing of the record on appeal with the Circuit Court of Appeals for the Ninth Circuit and for the docketing of this action in said Court be and it hereby is extended so that such record may be filed and such action may be docketed on or before August 4, 1948.

Dated July 8th, 1948.

/s/ PAUL J. McCORMICK,  
Judge.

[Endorsed]: Filed July 8, 1948.

[49]

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[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE  
RECORD ON APPEAL AND  
DOCKET ACTION

Good cause appearing from the affidavit of George W. Downing, Jr., made and filed herein,

It Is Hereby Ordered that the time for filing of the record on appeal with the Circuit Court of



Appeals for the Ninth Circuit and for the docketing of this action in said Court be and it hereby is extended so that such record may be filed and such action may be docketed on or before September 2, 1948.

Dated July 20th, 1948.

/s/ PAUL J. McCORMICK,  
Judge.

[Endorsed]: Filed July 20, 1948.

[50]

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[Title of District Court and Cause.]

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY  
ON APPEAL

Comes now the appellant Ewell Toobert, and hereby states that he intends to and will rely on the following points on appeal:

1. That the following findings are not supported by the evidence:

(a) Finding No. 5 (p. 2 1.24 to p. 3 1.2 of Findings of Fact) insofar as it purports to find that Ewell Toobert was a landlord of the premises mentioned therein;

(b) Finding No. 7 (p. 3 1s. 7-15) Finding No. 9 (p. 3 1s. 24-31) Finding No. 10 (p. 3 1.32 & p. 4 1s. 1-8), Finding No. 11 p. 4 1s.

9-16) Finding No. 13 (p. 4, ls. 25-32), Finding 14 (p. 5, ls. 1-9), Finding 15 [51] ( p. 5 ls. 10-17), Finding 17 (p. 5 ls. 26-32 & p. 6 1.1), Finding 18 (p. 6 ls. 2-10) insofar as these findings relate to Ewell Toobert, and find that he was the landlord of the persons named respectively as rent-payers in said findings, and find that he demanded and received certain sums respectively as rent of the respective premises described in said findings; for the sake of clarity, appellant hereby states that he does not on this appeal question the several maximum rents found in the foregoing findings, nor does he question the fact that the respective persons named as rent-payers in the said findings did in fact pay as rent the sums respectively therein found, without conceding that said sums or any part thereof was ever paid directly or indirectly to Ewell Toobert, or to any person on his behalf.

2. That the Findings of Fact are not supported by the evidence in that there is insufficient evidence to sustain the finding that Ewell Toobert was ever the landlord of any of the persons named as tenants in the findings, or that he ever demanded or received any over-maximum or other rents from said tenants or any of them.

3. That the Judgment is not supported by the evidence, in that there is insufficient evidence to sustain any judgment against Ewell Toobert as a landlord of said persons.

4. That the evidence is insufficient to establish that the defendant Ewell Toobert ever was the [52] landlord of Ida Mae Patrick, Jeffery Gassaway, Pearl Hildreth, Ernestine Coleman, Berdie Mae White, or Ethel Davis, or any of them, or that the relationship of landlord and tenant ever existed between defendant Ewell Toobert and any of the persons mentioned in this paragraph "4", or that defendant Ewell Toobert ever demanded or received from said persons or any of them any rent whatsoever.

5. That defendant Ewell Toobert was not the landlord of any of the tenants who paid over-maximum rents.

6. That defendant Ewell Toobert did not demand or receive, directly or indirectly, any over-maximum rents.

7. That the evidence establishes that defendant Jack Hammond alone was the landlord and that he demanded and received all of the over-maximum rents which are the subject of this action.

8. That the findings specified in Point 1, (a) and (b) are erroneous in that they are against the clear weight of the evidence in finding that Ewell Toobert was the landlord of any of the persons mentioned in said findings.

9. That the findings specified in Point 1, (a) and (b) are erroneous in that they are against the clear weight of the evidence in finding that Ewell Toobert ever demanded or received rent from any of the persons [53] mentioned in said findings.



10. That the Court erred in admitting hearsay evidence against the defendant Ewell Toobert over his objection.

Dated August 16, 1948.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 20, 1948.

[54]

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[Title of District Court and Cause.]

DESIGNATION OF CONTENTS  
OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

The defendant and appellant Ewell Toobert hereby designates the following portions of the record, proceedings and evidence in the above entitled action to be contained in the record on appeal:

1. First Amended Complaint — filed December 17, 1947.
2. Answer of the Defendant Ewell Toobert to First Amended Complaint—filed January 17, 1947.
3. Plaintiff's Request for Admissions Pursuant to Rule 36—filed February 19, 1948, but not including the Exhibits attached thereto.
4. Defendant's statement in Reply to Plaintiff's Request for Admissions—filed March 1, 1948.
5. Findings of Fact and Conclusions of Law—filed April 7, 1948. [56]
6. Judgment—filed April 7, 1948.

7. Notice of Clerk of Entry of Judgment.
8. Motion for New Trial filed April 16, 1948.
9. Order Denying Motion for a New Trial—  
filed April 23, 1948.
10. Notice of Appeal—filed June 5, 1948.
11. Statement Accompanying Cash Deposit in  
Lieu of Undertaking on Appeal — filed June 5,  
1948.
12. Statement or Certificate by Clerk of District  
Court that \$250.00 cash was deposited with him on  
June 5, 1948 in lieu of Undertaking on Appeal.
13. Order Extending Time to File Record on  
Appeal—filed July 8, 1948.
14. Order Extending Time to File Record on  
Appeal—filed July 20, 1948.
15. Any order made hereafter extending time to  
file record on appeal.
16. Statement of Points on which Appellant In-  
tends to Rely on Appeal.
17. Reporter's Transcript of Proceedings on the  
Trial of this action.
18. This designation of Contents of Record on  
Appeal.

Dated August 20, 1948.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Defendant,  
Ewell Toobert.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Aug. 20. 1948.

[57]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE  
RECORD ON APPEAL AND  
DOCKET ACTION

Good cause appearing from the affidavit of George W. Downing, Jr., made and filed herein,

It Is Hereby Ordered that the time for filing of the record on appeal with the Circuit Court of Appeals for the Ninth Circuit and for the docketing of this action in said Court be and it hereby is extended so that such record may be filed and such action may be docketed on or before September 3, 1948.

Dated August 30, 1948.

/s/ BEN HARRISON,  
Judge.

[Endorsed]: Filed Aug. 30, 1948.

[59]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 59, inclusive, contain full, true and correct copies of First Amended Complaint for Restitution and Injunction; Answer of Defendant Ewell Toobert to First Amended Complaint; Plaintiff's Request for Admissions Pursuant to Rule 36; Defendant's Statement in



Reply to Plaintiff's Request for Admissions; Findings of Fact and Conclusions of Law; Judgment; Notice of Entry of Judgment; Motion for New Trial; Order Denying Motion of Defendant Ewell Toobert for a New Trial; Notice of Appeal; Statement Accompanying Cash Deposit in Lieu of Undertaking on Appeal; Two Orders Extending Time to File Record and Docket Appeal; Statement of Points on Which Appellant Intends to Rely on Appeal; Designation of Contents of Record on Appeal and Order Extending Time to File Record and Docket Appeal which, together with copy of reporter's transcript of proceedings on March 22 and 23, 1948, transmitted herewith, constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that the sum of \$250 was deposited with me in lieu of an undertaking for costs on appeal.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$14.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 31st day of August, A. D. 1948.

(Seal)

EDMUND L. SMITH,  
Clerk.

In the District Court of the United States in and  
For the Southern District of California,  
Central Division

Honorable Charles C. Cavanah, Judge Presiding.

No. 7824-BH-Civil

TIGHE E. WOODS, Acting Housing Expediter,  
Office of the Housing Expediter,  
Plaintiff,

vs.

EWELL TOOBERT, JACK HAMMOND and  
WILLIAM H. HALL, DOE I and DOE II,  
Defendants,

REPORTER'S TRANSCRIPT OF  
PROCEEDINGS

Los Angeles, California  
Monday, March 22, 1948

Appearances: For the Plaintiff: Frank L. Hirst, Esquire. For the Defendant Toobert: George W. Downing, Jr., Esquire. For the Defendant Hammond: Harold J. Sinclair, Esquire. For the Defendant Hall: Ivan J. Johnson, III, Esquire. [1 \*]

(Case called by the clerk.)

The Court: Are both counsel present?

Mr. Hirst: We have a number of counsel representing the different defendants, your Honor.

The Clerk: Is Mr. Downing here?

Mr. Downing: Yes; representing the defendant Toobert.

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\* Page numbering appearing at foot of page of original certified Reporter's Transcript.

The Clerk: Mr. Sinclair?

Mr. Sinclair: Here.

The Clerk: Mr. Ivan Johnson?

Mr. Johnson: Here. [3]

IDA MAE PATRICK,

called as a witness by plaintiff, being first sworn,  
was examined and testified as follows:

The Clerk: Will you state your name, please?

The Witness: Ida Mae Patrick.

Direct Examination

By Mr. Hirst:

Q. Miss Patrick, where do you reside?

A. 422 East 15th Street.

Q. Do you recall when you first moved into that place.

Mr. Downing: I did not get that number.

(Answer read by the reporter.)

Q. By Mr. Hirst: Do you recall, Miss Patrick, when you first moved into that house?

A. Well, it was in October, the 26th, or November. I don't know just exactly. I paid my rent about three weeks before I went in and Mr. Hammond said the rent would start when I occupied the place.

Q. You moved in there either October or November 1946? [16]

A. No, '45.

Q. '45. Have you occupied that with your husband or by yourself?

A. With my husband.

Q. When you first rented the premises from whom did you rent them?

A. Mr. Hammond.

Q. Do you recall at this time where your con-



(Testimony of Ida Mae Patrick.)

versation, if any that you had, with Mr. Hammond took place?

A. In the home of Mrs. Coleman.

Q. And who was present at that time besides Mr. Hammond and yourself?

A. Mrs. Coleman.

Q. Mrs. Coleman. Do you recall what was said at that time with regard to the renting of these premises?

A. Well, he said it would be \$40.00 a month furnished.

Q. Furnished. Was there anything said at that time about the issuance of any receipts for the rent that you would pay?      A. No.

Q. Did Mr. Hammond refer in his conversation with you as to Mr. Toobert in any way being connected with the property?

A. Not at that particular time; no.

Q. After you moved in there you lived there constantly [17] since the latter part of 1946?

A. '45.

Q. '45. How much rent have you paid each and every month that you have lived there?

A. Up until—

Mr. Sinclair: Just a moment, your Honor. There is an objection on that. It is too broad. I would like counsel to state the time these rents were paid.

The Witness: On the 26th of each month.

The Court: Just wait a minute. He is entitled to know the time.

Mr. Hirst: I will be happy to.

Q. You stated you were required or asked by Mr. Hammond to pay \$40.00 a month?

(Testimony of Ida Mae Patrick.)

A. Yes.

Q. Did you pay \$40.00 a month?

A. I did.

Q. For the first month you moved in there?

A. Yes, sir.

Q. Do you remember what day of the month you paid it on?

A. On the 26th of each month.

Q. That is your rent day, is it? A. Yes.

Q. Has it been that same day ever since you moved in? [18]

A. Yes. But, however, he has not picked that up on that date every month.

Q. How long did you pay \$40.00 a month rent?

A. I believe it was in July that the rent was cut to \$20.00.

Q. July of what year?

A. I don't have the exact date. I don't remember.

Q. July of what year?

A. In '47, I guess, '47 or—I think '47.

Q. July, 1947. That is last July?

A. July.

The Court: You say the rent was cut? Did you use the expression "cut"?

The Witness: Well, we were paying \$40.00 and Mr. Hammond said thereafter, in July—I think it was the latter part of July, that we would pay 20.

The Court: All right.

Q. By Mr. Hirst: And from July of '47 on have you paid \$20.00 every month?

(Testimony of Ida Mae Patrick.)

A. No. About, I guess, two months ago or three months, then he said we would pay \$18.00 thereafter; so that is what we have been paying.

Q. For the period from October or November, 1945 to July, 1947 did you pay \$40.00 a month each and every month? [19]

Mr. Sinclair: Objection, your Honor, on the ground that limitation of the case precludes the recovery of any rent beyond one year. Anything this witness testified beyond one year prior to the date of this action is immaterial.

Mr. Hirst: We cite some law there, your Honor. I call your attention to the fact, your Honor, that this action is one for restitution and is brought under Section 205(a) of the Act, and is not an action under 205(e) wherein the express provision for one year Statute of Limitations is provided.

There have been some decisions by appellate courts in regard to the application of the Statute of Limitations as regards suits for restitution filed by the Administrator or Housing Expediter. And, your Honor, one case that I will cite in particular is the case of *Blood v. Fleming*, reported in 161 Fed. (2d) 292. It is a Tenth Circuit decision. I will read here an excerpt from page 295 of that decision.

“\* \* \* Section 205(a) creates a cause of action separate from that set out in Section 205 (e). It confers broad equitable powers upon the court giving it power to grant injunctions, enter orders of restitution, or any other equitable order conducive to proper enforcement of



(Testimony of Ida Mae Patrick.)

the provisions [20] of the Act. The limitations upon the powers of the court to proceed under the provisions of this section are governed by equitable considerations. Whether an action may be maintained under this section is not controlled by the one year limitation set up in Section 205(e). It may be instituted within such time as is not barred by laches.”

In other words, your Honor, the one year Statute of Limitations is strictly adaptable to the legal cause of action for the treble damages. But when we come into this court seeking restitution as a means of enforcing the rent regulations of the Rent Act, we are going under the equitable jurisdiction of this court and, of course, the traditional powers of equity require that only the doctrine of laches shall prevent the plaintiff from recovery in a suit in equity.

There is a more recent case than that, even, which has been decided by the Circuit Court of Appeals for the Fifth Circuit in the case of *Creedon v. Randolph*, and I haven't got the official citation for that, your Honor. That was decided on the 20th of January, 1948. In that case the Administrator had taken an appeal to the Circuit Court for the failure of the District Court to award restitution in a case that was presented as a default matter. It was [21] entirely presented as a default situation, and the court expressed itself in determining the case in the trial court that it had no jurisdiction to enter an order of restitution

(Testimony of Ida Mae Patrick.)

because the one year Statute of Limitations had expired.

(Further legal argument omitted from transcript.)

The Court: We have had this question up often as to under what circumstances the one year period of limitation applies, and I will have to overrule the objection. Go ahead.

Q. By Mr. Hirst: Mrs. Patrick, I believe the question was: Did you pay \$40.00 a month rent for each and every month from October or November, 1945 to July of 1947? A. Yes.

Mr. Downing: Just a moment. The previous question, your Honor, was 1946.

Mr. Hirst: No. She corrected me, counsel. She said that she first rented it in October or November, 1945.

Is that right, Mrs. Patrick?

Mr. Downing: Just so I get the facts.

Mr. Hirst: I had that same thought.

The Court: Go ahead.

Q. By Mr. Hirst: Is that true, Mrs. Patrick? You heard my question? A. Yes; I did. [22]

Q. Did you pay \$40.00 a month?

A. I paid \$40.00 a month.

Q. All right. To whom did you pay your rent?

A. Well, I paid it first to Mr. Hammond, and then he came by and told me that Mr. Hall would collect the rent; that he was so busy he didn't have time to come and collect it. So I don't remember the number of weeks or months that I paid to

(Testimony of Ida Mae Patrick.)

him. However, I have a book here. They didn't give me a receipt but they wrote it down in my book.

Q. May I see the book, please?

A. Yes; you may.

The Court: We will take a recess of 10 minutes.

(Short recess.)

Mr. Hirst: Your Honor, Mrs. Patrick has shown me a book which has entries in three different places, which are merely notations of the receipt of rent; and I will ask her to identify them here. I have show them to some of the counsel but not to all.

Q. Mrs. Patrick, I am showing you now the entries made—this is a day book, is it not, for 1939. Was that used for the purpose—

A. Well, this is the only thing that I had that I thought I could keep. Of course, the first mark on the back of the calendar—I destroyed my calendars that following year and threw that one out, but this is what I have now. [23] That is Mr. Hall's signature there.

Q. Now referring to the date on this date calendar, "Sunday-Sept. 3" there are various notations. The first notation is "Paid up to Sept. 26-46 \$40.00" with the initials "W.E.H." Will you state to the court what that entry represents there and who signed that?

A. I don't know Mr. Hall's full name. He happens to be here. But that is his initials.

Q. Did he make those initials himself?



(Testimony of Ida Mae Patrick.)

A. Yes.

Q. And did you pay him \$40.00? A. Yes.

Q. For that entry of that receipt there?

A. I did.

Q. Is that true, the same testimony you have given, is that also true as to the next entry which includes the period "Paid up for Oct. 27th-46" and same initials?

A. Yes; those are the same initials.

Q. Was that personally placed there by Mr. Hall? A. Yes.

Q. Is that also true for the November entry there? A. That is also true.

Q. With reference to the last page, the last white sheet in the book, under the date of "Monday-Dec. 25" and "Tuesday-Dec. 26" there is a list of receipts there starting [24] with "Paid For Nov. until Dec. 17." That is for what year? Does that pick up where these others left off?

A. That picks up from that, this one here.

Q. All right. That is, then, from '46, is that right? A. Yes.

Q. And the various other entries on that sheet, are they also written by Mr. Hall?

A. They are all by the same initials and these are written by Mr. Hall.

Q. They are all in response to the payment for the rent? A. For the rent.

Q. Which was how much? A. \$40.00.

Mr. Hirst: Your Honor, I could extract these, I believe, for the purposes of concising the exhibit.

(Testimony of Ida Mae Patrick.)

I would like to offer the notations that Mr. Hall made.

The Court: Pass it to counsel and let them see it.

Mr. Downing: Why don't you offer that whole book?

Mr. Hirst: I think it would be more practical--

Mr. Downing: I certainly would object to cluttering up the record with anything unnecessary.

The Court: What part do you wish to offer?

Mr. Hirst: I offer the part to which she has already referred and testified to.

The Court: It may be admitted. [25]

Mr. Sinclair: May they all go in as one?

Mr. Hirst: Yes.

The Clerk: How many are there?

Mr. Hirst: There are just those two pages.

The Clerk: Plaintiff's Exhibit 6.

The Court: I will state to counsel with regard to your objection a minute ago with regard to the one year Statute of Limitations, the court is receiving this evidence, but you will have a right to represent it before the close of the case if you wish. I want to get the facts to see whether they come in under your objection, so you are not barred from raising it. But I think I should hear the facts.

Mr. Downing: On behalf of our defendant, too, your Honor, our position is the same; and we have applied the Statute of Limitations. It did not occur to me as necessary to elaborate in defense of that to the court at this time.

The Court: The court is reserving the right to finally rule on that limitation until after I hear the

(Testimony of Ida Mae Patrick.)

evidence as to what the mathematics of the situation is. I cannot determine it right off now. You will understand that you are not barred from raising it hereafter.

Mr. Sinclair: Thank you, your Honor.

The Court: I think that is the only way I can do, because some courts hold one way and some the other. Go ahead. [26]

Q. By Mr. Hirst: Mrs. Patrick, you stated that you did pay some of the rent to Mr. Hammond?

A. Yes.

Q. When was that that you first paid him any rent?

A. Oh, after Mr. Hall—

Q. No. When did you first pay Mr. Hammond any rent?

A. Oh, that was in '45.

Q. When you first rented the premises?

A. Yes. And I last paid him the 26th—it was due the 26th—but he picked it up the 28th of February.

Q. Of this last month?

A. Yes.

Q. Let us keep the two periods separate now. When you first went in there and stated you paid to Mr. Hammond, for how long a period did you pay to Mr. Hammond?

A. Well, until Mr. Hall started collecting the rent.

Q. Do you remember on or about when that was?

A. I don't remember the date.

Q. Do you know whether you paid to Mr. Hammond for two months or three months?

A. Oh, longer than that.

Q. Was it six months?

A. Maybe a year.



(Testimony of Ida Mae Patrick.)

Q. Did he or did he not give you any receipt for it?

A. This is the only receipt that I have ever been [27] given and on the back of a calendar.

Q. But you do not have even that marked down portion for the part that he first collected when you went in there?

A. No; I don't have that. That is out of my book. I don't know just how that got out, but it is out, I see. But I just have this, and it must have been September he picked up, Mr. Hall. That is what I have.

Mr. Hirst: Your Honor, I believe the part to which the witness is referring is beyond the period included in our complaint, at which time the rent had already been reduced by Mr. Hammond, pursuant to her previous testimony that in July of 1947 the rent was reduced to \$20.00, and then later to \$18.00 a month.

Q. That is true, is it not?           A. Yes; it is.

Q. But as to the first part of your occupancy there you did not have any sort of record of a receipt?

A. I don't have the record of that, no more than what I paid Mr. Hall.

Q. But you paid Mr. Hammond the same amount, was it, \$40.00?

A. I paid him the same amount.

Q. You stated earlier in your testimony that there was a conversation that you had with Mr. Hammond with regard to Mr. Toobert. Will you

(Testimony of Ida Mae Patrick.)

please state where that conversation [28] took place? A. Mr. Hammond called—

Mr. Downing: Just a minute, please.

Mr. Hirst: Just a moment, please. We are laying a foundation here first.

Q. Where did this conversation take place?

A. Mr. Hammond called me over the phone and said that Mr. Toobert would pick the rent up.

Mr. Downing: Just a minute. May I move to strike out the portion of that answer which was not responsive and beyond the confines of the question?

The Court: He is asking you to relate a place and time before you go into the conversation. So the objection will be sustained.

A. Well, I really don't know the exact time, because it was in the evening when I returned from work. It must have been about 8:30 or 9:00 o'clock at night. It was on the telephone.

Q. By Mr. Hirst: Do you remember about how long after you first moved into the house that you had this conversation?

A. Oh, this was recently that I had the conversation.

Q. It was recently. How recently?

A. I don't know.

Q. Was it last month or last two months ago?

A. Well, it must have been a month before. It was about the last of January or the first of February.

Mr. Sinclair: We move that that answer be stricken.

(Testimony of Ida Mae Patrick.)

The Witness: He said that he would not be picking up the rent. Mr. Toobert would be picking it up.

Mr. Sinclair: We move to strike out what was said in January of this year.

The Court: Beyond the one year period.

Mr. Hirst: It is beyond the period, your Honor. I frankly do not know what the testimony will be as to the conversation.

The Court: As I said, counsel, I am receiving this and I am reserving the ruling on it because I am unable to determine when it is going in. You understand your rights will be heard on it; you are not foreclosed.

Mr. Downing: I do not know whether the counsel has asked the witness to state the conversation yet or not.

Mr. Hirst: Not yet I haven't.

Mr. Downing: After you do, I would like to make an objection.

Mr. Hirst: Your Honor, perhaps if I asked the witness myself I may know whether I should persist or not. I can pretty well tell whether it will have the elements of admissibility or not.

The Court: You may do so. Consult with the witness. [30]

Q. By Mr. Hirst: I will ask the witness, then, to state what conversation took place over the telephone with Mr. Hammond on this occasion that you refer to. What was the conversation?

The Court: Now, wait a minute. Do not answer until counsel have an opportunity to object.

Mr. Downing: To which we make objection on



(Testimony of Ida Mae Patrick.)

behalf of the defendant Toobert that the conversation is as to him pure hearsay, not binding upon him. Those are the objections.

Mr. Hirst: Your Honor, I will admit that we have to tie up the defendant Toobert with the defendant Hammond.

The Court: I will allow it, with such tying up, as you refer to it. If not, it would be hearsay. With that understanding, go ahead. You have got a situation here and I have got to receive the evidence the best way I can, and then we will size it up at the last as to what is admissible.

Q. By Mr. Hirst: What was the conversation, Mrs. Patrick? What did you say and what did he say?

A. Well, he called over the phone and said that he would not be able to pick the rent up any more; that Mr. Toobert would pick up the rent himself hereafter. And I don't remember what day that was or what date it was, but I know it was in the last four or five weeks ago.

Q. Was that all that was said? [31]

A. Yes.

Mr. Hirst: That is all, Mrs. Patrick.

The Court: Just wait a minute. They might want to ask you a question in cross examination.

Mr. Downing: I have no questions.

#### Cross Examination

By Mr. Sinclair:

Q. Mrs. Patrick, you said that you paid—

The Court: Speak a little louder so that she can hear you.

(Testimony of Ida Mae Patrick.)

Q. By Mr. Sincalir: You said that you paid some money to Jack Hammond, is that right?

A. I paid him the amount of rent that I was supposed to pay him on the 28th day of February.

Q. As a matter of fact, Mrs. Patrick, you paid that sum, part of it was for rent and part of it was for something else; isn't that correct?

A. No; it was not.

Q. You say it was in February. What year was that? A. Pardon me?

The Court: You say in February. What year was that, do you remember?

The Witness: '48.

The Court: 1948. Do you know the amount you paid him?

The Witness: \$18.00 [32]

The Court: \$18.00.

Q. By Mr. Sinclair: Just a couple of questions, Mrs. Patrick. Can you remember at this time what period that you paid this \$40.00, I believe you said, to Mr. Hammond? I mean you paid to Mr. Hammond direct? A. What period?

Q. Yes. What period did you pay this money to Mr. Hammond after the time you moved in? You moved in about October of '45. Did you pay Mr. Hammond for the month of October, 1945?

A. I paid Mr. Hammond before I moved in. He said, "Your rent will start when you occupy the place."

Q. I see. A. That was on the 26th.

Q. 26th of what month? A. October.

Q. October. A. 1945.

(Testimony of Ida Mae Patrick.)

Q. Did you pay him any monies after that month? Did you pay him directly any money after that month? A. I paid him directly.

Q. For how many months?

A. For some period of time. I don't know because I don't have a receipt.

Q. All right. You can't testify that a bill was paid [33] by presenting a receipt, or testify it was paid. Will you tell us for how many months exactly you paid him?

A. I don't know how many months.

Q. In other words, could it be one month?

A. You know it was more than one month. Probably a year and six months I paid Mr. Hammond. I know it was more than a year that I paid him.

The Court: Counsel, we can't get these periods of time.

Mr. Sinclair: She has an overlap here. I wanted to clear that up.

Mr. Hirst: Her testimony is she paid \$40.00 each and every month she was in there until July, 1947.

The Court: How many months was that. The court has got to know something about it.

Mr. Hirst: Yes. Well, we have the testimony here, or I might ask her on redirect to clear it up.

The Court: You must let me know how long she paid it.

Mr. Hirst: She doesn't know exactly how many months she paid it, but she knows it was at least a year, to Mr. Hammond directly, and thereafter she has paid it to Mr. Hall, which she has receipts to cover that period.



(Testimony of Ida Mae Patrick.)

Mr. Sinclair: Counsel, if you are going to testify you should take the stand and be sworn.

Mr. Hirst: Counsel asked me a question, counsel. [34]

The Court: I am trying to find out when it commenced and when it ended.

The Witness: Well, Judge, your Honor, I had nothing to go by but the book and, as I told him, part of it has been destroyed.

Mr. Sinclair: That is all.

The Court: That is not for the court to say. I am just trying to find out what the facts are.

Redirect Examination

By Mr. Hirst:

Q. You stated that your first month in there. Mrs. Patrick, was in October of 1945. A. '45

Q. And you first paid your rent to Mr. Hammond? A. To Mr. Hammond.

Q. For how long a period are you sure you paid it to Mr. Hammond directly before you started to pay it to Mr. Hall?

A. For better than a year I am sure.

Q. Then after that time to whom did you pay it?

A. To Mr. Hall.

Q. Until what time? A. In July.

Q. Of what year? You have to be specific?

A. '47, I believe. [35]

Mr. Hirst: That is as good as I can do, your Honor.

The Witness: July of '47.

The Court: Go ahead. We will have to figure it out.

(Testimony of Ida Mae Patrick.)

Mr. Hirst: This exhibit, your Honor, will clarify the period subsequent to September, '46.

The Court: Paid to Hall commencing with September, 1946?

Mr. Hirst: Yes. From that time on there is a notation here for a period of several months.

The Court: Paid to Mr. Hall commencing in September, 1946, and for how long, until when?

Mr. Hirst: Until August of 1947, your Honor.

The Court: Until August. All right. Now we have got between those times.

Mr. Hirst: Before October, 1946, your Honor, or, I should say September—I am looking at the wrong entry there. The rent was paid to Mr. Hammond, is that right?

A. Up until that time, up until Mr. Hall took over.

Mr. Hirst: That is all.

Mr. Johnson: I would like to ask a question or two.

#### Cross Examination

By Mr. Johnson:

Q. Mrs. Patrick, do I get your testimony now that you began paying Mr. Hall in September of '46? Does the record show there? [36]

A. You know, I have nothing to go by.

Q. You do not have very much there.

A. That is all I have.

Q. I wonder if you could refer to this now and tell up when Mr. Hall received the first?

A. I told you at the beginning I didn't know the exact date that Mr. Hall started collecting the

(Testimony of Ida Mae Patrick.)

rent, but I believe he quit in July, the last of July.

Q. That is of '47? A. Yes.

Q. And you can't recall now by looking at your notes there as to when he started?

A. Well, because some of my notes are gone. You see, they didn't give me no receipt. They just marked that in this book, and carelessly handling this book, I guess some of it got destroyed.

Q. Mr. Hall lived there on these premises, too, did he not? A. At that time; yes.

Q. At that time. And do you recall when he moved in? You were there prior to him, were you not?

A. Yes; I was, but I don't know when he moved in.

Q. You don't know when he moved in. How did he start collecting the rents there? Will you tell the court?

A. Mr. Hammond said that Mr. Hall would pick the rent [37] up, that he didn't have time to do it.

Q. Did you have an understanding that Mr. Hall was your landlord or agent to collect that rent?

A. No; he wasn't supposed to be the landlord. He was working for Mr. Hammond, I suppose.

Q. Did you have a conversation with Mr. Hall about the collection of those rentals?

A. No. Mr. Hammond said that he would pick it up, and then Mr. Hall came by and collected on the day that it was due.

Q. You understood that the money was to be turned over to Mr. Hammond, is that correct?



(Testimony of Ida Mae Patrick.)

A. Yes.

Mr. Sinclair: May we have an objection to that?

The Court: Now, he objects that may be a conclusion. Do you know that Mr. Hall was to turn this money over to Mr. Hammond? That is the question. If you don't know it, say so. If you do, how do you know it?

The Witness: I beg pardon?

The Court: He is asking you the question: Do you know whether Mr. Hall was to turn this money over?

A. Oh, no; I don't know that. I know Mr. Hall was presumed to collect the rent. I couldn't say positively that he turned it over.

Q. By Mr. Sinclair: As a matter of fact, you moved [38] into those premises in December of 1945, is that correct? A. What?

Q. As a matter of fact, you moved into those premises in December of 1945, isn't that correct?

A. No; I did not. I moved into those premises in October.

Mr. Sinclair: All right, thank you.

#### Redirect Examination

By Mr. Hirst:

Q. With regard to that conversation with Mr. Hammond that counsel just asked you about, what was the reason that Mr. Hammond gave for Mr. Hall picking up the rent?

A. He said that he was busy, building, doing some building; that he wouldn't have time to pick it up.

Q. I see.

(Testimony of Ida Mae Patrick.)

A. So, for us to pay our rent to Mr. Hall.

Mr. Hirst: That will be all. Is Mr. Gassaway in court?

JEFFERY GASSAWAY,

called as a witness by the plaintiff, being first sworn,  
was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Jeffery Gassaway. [39]

Direct Examination

By Mr. Hirst:

Q. Mr. Gassaway, what is your business or occupation?

A. Well, I work at the used car park there.

Mr. Downing: I can't quite hear the witness.

Mr. Hirst: Louder, please.

A. I say, I work at a used car lot.

The Court: You will have to talk louder.

Q. By Mr. Hirst: What do you do? What is your work?

A. Well, I buff cars.

Q. Did you ever live at 422 $\frac{1}{4}$  East 15th Street, Los Angeles?

A. I did.

Q. Do you recall when you moved in there?

A. About the latter part of September, 1945.

Q. When I ask you dates, now, refer to the year as well because we overlap a number of years here. What year was it?

A. I said about the 21st of September in 1945.

Q. How long did you stay in there?

A. I stayed there until about the 10th of April, 1946.

(Testimony of Jeffery Gassaway.)

The Court: I can't hear you. The 10th of April, 1946? A. 1946.

Q. By Mr. Hirst: From whom did you rent the [40] accommodations there?

A. I rent from Mr. Hammond.

Q. Mr. Hammond, Jack Hammond?

A. That is right, sir.

Q. Do you recall what conversation you had when you first rented it from Mr. Hammond? What did he state as to the rent, if anything?

A. He state \$40.00 a month.

Q. Did you pay \$40.00 a month?

A. I sure did.

Q. And to whom did you pay it?

A. To Jack, Mr. Hammond there.

Q. Was that true all during the time you lived there? How long did you pay it to Mr. Hammond?

A. Until the 10th of March, '46.

The Court: March, 1946.

Q. By Mr. Hirst: And at that time you paid the rent up until April, did you?

A. That is right.

Q. How much rent did you pay all during the time you were there?

A. I say, I paid \$40.00 each month.

Q. Did you get a receipt for it?

A. No receipt.

Q. Was there anything said about receipts with Mr. [41] Hammond? Did you ask for one or did he offer one?

A. He said he didn't give receipts. He said he didn't give no receipt.



(Testimony of Jeffery Gassaway.)

Q. Did Mr. Hammond ever refer to Mr. Toobert as in any particular as to these premises here? Did he ever mention his name at all to you?

A. Not to me.

Mr. Hirst: That is all.

Mr. Downing: No questions.

Mr. Sinclair: No questions.

Mr. Johnson: Just one question.

Cross Examination

By Mr. Johnson:

Q. Did you ever pay any rent to Mr. Hall?

A. No; I didn't.

Mr. Johnson: That is all.

Mr. Hirst: That is all. Mrs. Hildreth, please.

PEARL HILDRETH,

called as a witness by plaintiff, being first sworn,  
was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Pearl Hildreth?

Direct Examination

By Mr. Hirst: [42]

Q. Mrs. Hildreth, where do you live?

A. 4221 $\frac{1}{4}$  East 15th Street.

Q. When did you move into that address?

A. April the 10th, 1946.

Q. To whom did you pay your rent?

A. To Jack Hammond.

Q. How much rent did you pay?

(Testimony of Pearl Hildreth.)

A. \$40.00 a month.

Q. How long did you pay rent to Mr. Hammond?

A. The rent was paid to Mr. Hammond from April, 1946 until December, 1946.

Q. In December, 1946 what happened with regard to the person to whom you paid your rent from that time on?

A. Mr. Hammond went out of town and he told me to pay the rent to Mr. Hall.

Q. Did he say to pay it just that one time to Mr. Hall, or what was the conversation?

A. Well, just pay the rent to Mr. Hall. I paid the rent to Mr. Hall for about, until July of 1947.

Q. Then after July, 1947 to whom did you pay it?

A. Well, Mr. Hammond picked the rent up twice.

Q. That was after July, 1947?

A. That is right.

Q. Now, from the period from April 10, 1946 to July, 1947 how much rent did you pay each month? [43]

A. \$40.00.

Q. Have you ever seen Mr. Toobert before?

A. Yes; I have.

Q. Will you describe the circumstances under which you first met Mr. Toobert?

A. I had a fire in my home in 1946 on October 5th. Mr. Toobert knocked on the door and said he was the owner of the property. He came down with the insurance fellow to see about the damage that was done. I asked Mr. Toobert if he would

(Testimony of Pearl Hildreth.)

fix the windows on the house. He had already had the house painted. He said he would get around to that later. I told him I was paying \$40.00 a month; I thought that ought to be enough; that he should fix the windows, which the windows haven't been fixed until yet.

Q. What did he say, if anything?

A. Well, he and the insurance fellows began to talk, and he told me that he would have the windows fixed.

Q. Do you recall anything else that was said during that conversation?

A. No; no more than he asked me and the fellow, the insurance fellow, do he think the place looked all right, and that is how we got around to the conversation about the windows and that was practically all.

Mr. Hirst: All right, that is all. [44]

### Cross Examination

By Mr. Sinclair:

Q. Mrs. Hildreth, you said that on April 14 to December 14 that you gave this money to Mr. Hammond? A. Yes.

Q. And then from December 1, 1946 to what date did you testify you paid Mr. Hall? I didn't hear that.

A. The rent was due on the 10th of each month.

Q. Yes. Let me put it like this: How long or for how many months did you pay this rent to Mr. Hall?



(Testimony of Pearl Hildreth.)

A. Let's see; September until July of '47; December, '46 until July of '47.

Q. Mrs. Hildreth, as a matter of fact this money that you paid, part of it was for rent and part of it was for something else; isn't that correct?

A. My understanding it was for rent.

Mr. Sinclair: That is all.

Mr. Johnson: Just one question.

Q. During the time that you were paying this rent to Mr. Hall he was living on those premises, is that correct?      A. Yes; he was.

Mr. Johnson: That is all.

#### Cross Examination

Q. Mrs. Hildreth, you have seen Mr. Toobert, you say, [45] only once before?

A. No. I saw Mr. Toobert, he was at the place two or three times while it was being fixed.

Q. This was following the damages which were caused by fire?      A. That is right.

Q. And he came down there with the insurance adjuster?      A. And said he was the owner.

Q. And examined the portions of the building which had been damaged in that fire, is that right?

A. That is right. Also, he came by to see the people that was working for him. He had working for him two fellows that done the work in the house.

Q. You mean this was in repair of some damages caused by the fire?      A. That is right.

Mr. Downing: That is all.

Q. By Mr. Sinclair: When was this, Mrs. Hildreth?

(Testimony of Pearl Hildreth.)

A. October the 5th when that fire was in 1946.

Mr. Sinclair: No further questions.

The Court: That is all. You are excused.

Mr. Hirst: Mrs. Coleman, please.

ERNESTINE COLEMAN,

called as a witness by the plaintiff, being first sworn,  
was examined and testified as follows: [46]

The Clerk: Will you state your name, please?

The Witness: Mrs. Ernestine Coleman.

Direct Examination

By Mr. Hirst:

Q. Mrs. Coleman, where do you live?

A. 442 $\frac{3}{4}$  East 15th Street.

Q. Did you ever live at 422 $\frac{1}{4}$  East 15th Street?

A. I did.

Q. Do you recall when you lived there?

A. I moved in there July the 16, 1945.

Q. For how long a period did you live in that particular accommodation?

A. I only stayed there just not quite two months.

Q. From whom did you rent it?

A. From Mr. Jack Hammond.

Q. What rental arrangements were made with Mr. Hammond with respect to this apartment?

A. Well, when I moved in I paid him \$42.00 for the first two months that I was in the place in that particular address.

Q. Did he give you any receipts for that?

A. No; he didn't.

Q. Did you ask for any?

(Testimony of Ernestine Coleman.)

A. No; because he told me that he wasn't giving receipts. [47]

Q. After you were in there for two months then what happened? A. I moved in 422 $\frac{3}{4}$ .

Q. Have you lived in there continuously since that time? A. Until this time up until now.

Q. Following your moving into the place you are in now, 422 $\frac{3}{4}$ , your arrangements for transfer there, were they made with Mr. Hammond also?

A. No. I asked him could I take that place after it got vacant. He said, "Sure."

Q. Who was living in it at the time?

A. At the time, white people were living in there when I moved in.

Q. Did he allow you to take the place then?

A. He told me I could take it.

Q. And what did he specify the rent would be?

A. Well, after—you see, when I first moved in I paid him 42 for a couple of months. Then after the white people moved out and the colored moved in, then I paid 40 just like they did; I started paying \$40.00 rent then.

Q. Did you pay that to Mr. Hammond?

A. For so long a time, until I started paying it to Mr. Hall.

Q. How long a time did you pay it to Mr. Hammond, do [48] you recall, after you moved there to 422 $\frac{3}{4}$ ?

A. Well, I paid it to Mr. Hammond up until after Mr. Hall moved in the place, and Mr. Hall was in the place about two or three months, then



(Testimony of Ernestine Coleman.)

Mr. Hammond came by and told us to pay Mr. Hall the rent, that was around about in '46, around about February or March when we started paying—when I started paying Mr. Hall my rent.

Q. February or March, 1946?

A. Around about that time.

Q. You started to pay Mr. Hall from that time on?

A. Yes.

Q. What was the conversation you had with Mr. Hammond? You testified Mr. Hammond came and told you to pay Mr. Hall. Do you recall?

A. He came and told me that he was working and it was so inconvenient for him to get down about the rent, and just take the rent over there and give it to Mr. Hall.

Q. And did you do that?

A. I did.

Q. For how long a time thereafter did you pay Mr. Hall the rent?

A. I paid Mr. Hall the rent up until about July of '47.

Q. After July, 1947 who did you pay it to?

A. To Mrs. Dodson. [48-A]

Q. Mrs. Dodson?

A. Mrs. Dodson.

Q. How do you spell that, please?

A. D-o-d-s-o-n.

Q. Who was it that told you or directed you to pay your rent to Mrs. Dodson?

A. He told me.

Q. Who was that?

A. Mr. Hammond told me to leave it over there with her and he would pick it up.

(Testimony of Ernestine Coleman.)

Q. Where does Mrs. Dodson live, do you know?

A. 424 East 15th Street.

Q. After July, 1947, what rent did you pay there, how much?

A. In July, '47 the rent went down to 20, and then he told us after then we would pay 18.

Q. Did you ever have any conversation with Mr. Hammond about receipts? Did you ever ask him for receipts?

A. Well, only once we talked about it he told me he wasn't giving any receipts, just like he first said when I moved in there. He told me first he wasn't giving any receipts.

Q. What did he say when you first moved in there?      A. Told me he wasn't giving receipts.

Q. Have you ever seen Mr. Toobert? [49]

A. Several times.

Q. Under what circumstances have you seen Mr. Toobert?

A. Well, only once he came to the house and looked around, you know, the yard, that he was going to repair the places, and then several more times he was in the court, you know, just looking over the property and houses and things, and I only come in contact with him once, myself, to talk to him.

Q. What was said at that time?

A. He said he was just looking the place over; he was going to repair them and he was looking at my porch at the time, and he was on the steps, and he said, "They need a repair." And he was going to repair the places.

(Testimony of Ernestine Coleman.)

Mr. Hirst: That is all.

Mr. Sinclair: Just a moment.

Cross Examination

By Mr. Sinclair:

Q. Mrs. Coleman, during the time you occupied these premises did you pay your rent in advance, a month in advance, did you?

A. I paid in advance when I moved in.

Q. Now, of all the other parties here, I believe you occupied these premises before any of the others, is that correct?

A. That is right. [50]

Q. At the time you moved in, Mrs. Coleman, did you have a conversation with Mr. Hammond with reference to certain decreases?

A. No; not that I recollect.

Q. As a matter of fact this money that you did pay Mr. Hammond, part of it was for rent and part of it was for something else; isn't that correct?

A. It was for rent.

Q. And it was February 1946 that you say you started to paying Mr. Hall?

A. It was around about February or March; it was after the first of the year.

Mr. Sinclair: All right; that is all.

Mr. Johnson: No questions, your Honor.

Mr. Downing: Just a minute.

Cross Examination

By Mr. Downing:

Q. When did you talk to Mr. Toobert?

A. I don't know. It was in the summer months in—



(Testimony of Ernestine Coleman.)

Q. What year? A. In 1946.

Q. The summer of 1946? A. Yes.

Q. Who else was present? A. No one. [51]

Q. Was that the first time you ever saw him?

A. No; that was not the first time I saw him.

Q. The first time you ever talked to him?

A. Yes; that was the first time and the only time.

Q. Did you introduce yourself to him?

A. No; I didn't. I saw him. He was out around in the yard, looking over the place, and I went out. He said, "Well, I am just looking around to see what repair needs done on the houses."

Mr. Downing: That is all.

The Court: Is that all?

Mr. Hirst: That is all.

The Court: Recess until 2:00 o'clock.

Mr. Hirst: Thank you.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, Monday, March 22, 1948.) [52]

Los Angeles, California

Monday, March 22, 1948, 2:00 p.m.

The Court: You may proceed.

Mr. Hirst: Mrs. White, please.

BERDIE MAE WHITE,

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Berdie Mae White.

Direct Examination

By Mr. Hirst:

Q. Mrs. White, where do you live?

A. 424 East 15th Street.

Mr. Johnson: May I have her address again, please?

(Answer read by the reporter.)

Q. By Mr. Hirst: How long have you resided there?

A. Oh, about two years and a half.

Q. Will you clarify just what you mean by living at 424? There are a number of accommodations there at that same address, are there not?

A. Oh, upper front.

Q. You live in the upper front portion of that address? A. That is right.

Q. Do you remember when you first rented the accommodations? [53] A. Yes; I do.

Q. Do you remember the approximate date?

A. October the 10th in 1945.

Q. From whom did you rent the apartment?

A. Jack Hammond.

Q. Do you recall at this time that conversation that was had with Mr. Hammond at that time?

A. No. My husband, he made the play with Jack to rent the place and he had to leave town the next morning. He is a train man.

(Testimony of Berdie Mae White.)

Q. Were you present when the arrangements were made?      A. Yes.

Q. You were present?      A. Yes; I was.

Q. With your husband?      A. Yes, sir.

Q. Who else was there besides Mr. Hammond?

A. Just Mr. Hammond, myself, and my husband.

Q. Where did that conversation take place?

A. At 424 East 15th Street.

Q. At the site of the place where you lived?

A. No. I had a room there at the time.

Q. What was the conversation, now, as you recall it?

Mr. Downing: Just a moment. That is objected to so far as the defendant Toobert is concerned on the ground that to [55] him it is hearsay and is not binding. And I would suggest we have some understanding here as to all the conversations, in the interest of brevity of the trial. Would that be satisfactory?

Mr. Hirst: As I stated before, I understand there is to be a link-up there with Mr. Toobert.

The Court: This is preliminary, leading up. You have to make the connection with your client.

Mr. Downing: Yes; for that connection cannot be established by conversation at which he was not present and in which he took no part.

The Court: Of course, I am not expressing any opinion because I had not thought of it. But you have got to see whether they lead up, preliminarily, to make the connection as to whether Hammond was representing your client or to make that



(Testimony of Berdie Mae White.)

connection. But it is just a question of order of proof, that is all. Overruled. Go ahead.

Q. By Mr. Hirst: Will you state what you can recall of the conversation that took place at that time?

A. Well, it was—I think it was the Spanish lady had the front, and my husband said when she moved, “Could I have that front apartment?” And he said that you could, but it costs you \$40.00 a month. And so he said, “Well, I will be out of town but I will have my wife go by the bank and get you the \$40.00 and bring it to your house the [55] next day.” Well, I went to work the next day and didn’t get to carry it, but that Tuesday I carried it. That was on Monday, so that Tuesday morning I laid off of work and carried the \$40.00.

Q. How long before the 10th of October was that?

A. The Sunday was the 10th, but I didn’t give him the money until Tuesday, I think it was.

Q. Did you ever receive a receipt from Mr. Hammond for the rent that you paid him?

A. No; I didn’t receive a receipt, but he made me out a slip of paper, just said like “October the 10th, to November 10th.”

Mr. Sinclair: If the court please, we object to that because the slip of paper is the best evidence.

The Court: Sustained.

Q. By Mr. Hirst: You do not have that paper with you.

A. No; I don’t have it. It got misplaced.

Q. Do you know what happened to that paper?

(Testimony of Berdie Mae White.)

A. No; I surely don't. It was just a little old loose piece of paper. It just wasn't a receipt. He said, "I don't give no receipts." I said, "Well, you can show me something for my money, can't you?" So he just wrote "October 10th until November 10th" and that is all.

Q. How long did you pay your rent to Mr. Hammond after you moved in there? [56]

A. I paid him from October the 10th in 1945 until about April the 10th in 1946.

Mr. Sinclair: The complaint states that she moved in from October the 7th, 1946.

The Witness: 1945.

Mr. Sinclair: I believe her testimony in chief was 1946 and her complaint says 1946. Now, I think that is the only issue involved, your Honor, as far as 1946. There is no issue tendered before that date.

The Court: I say, I made a ruling on that. The complaint does say 1946, during that year. That is your schedule attached to your complaint.

The Witness: Well, I really think that it was 1945 in October.

Mr. Hirst: Your Honor, I do not believe that I will ask the court's permission to amend the complaint to go back any further than we have already alleged. Therefore, I will restrict our testimony insofar as overcharges for the period from October, 1946 on. But the testimony of the witnesses as to the rental arrangements, I believe are very material to the transactions that took place

(Testimony of Berdie Mae White.)

at a subsequent period. For that reason I have gone into those on direct examination.

The Court: For mathematically determining the amount, you will limit yourself to 1946?

Mr. Hirst: That is right, your Honor. [57]

Mr. Sinclair: That is all right. We will accept that statement.

The Court: Very well. You say you went in there November 11, 1945—see if I am correct—remained until September 7, 19 what, the same year or the next year? How long were you in there? The Witness: In the house?

The Court: Yes.

The Witness: This is going on my third year.

The Court: You remained there, then, until 1947, did you?

The Witness: I am still there now.

The Court: All right. It is just a question of when you went in first. All right; I just want to get your dates. You were there until 1947?

The Witness: Yes, sir.

The Court: September what?

Q. By Mr. Hirst: How long a time did you pay Mr. Hammond the rent?

A. Well, I paid him from October the 10th until—

Q. October 10th of what year? Always mention the year. A. Well, that was in 1945.

Q. All right.

A. Until April 10th in '46. I think that is when Mr. [58] Hall took it over.



(Testimony of Berdie Mae White.)

Q. What happened on or about April 10, 1946 with reference to the collection of the rent?

A. Well, Mr. Hammond said that he was busy, I think building some houses or something, and he wouldn't have time to come by and collect the rent, just give it to Mr. Hall.

Q. Did Mr. Hammond come to you to tell you that?      A. He told my husband.

Q. Were you present when he told him?

A. Yes; I was present.

Q. From that time on, namely, April 10, 1946, to whom did you pay the rent?

A. Mr. Hall.

Q. And how much rent did you pay Mr. Hall?

A. \$40.00 a month.

Q. Did you pay him \$40.00 a month right along?

A. I paid him \$40.00 a month until in July. Mr. Hammond had a meeting and he said that he wanted us to pay him \$50.00 a month and I told him—

Q. Just a moment. What do you mean by a meeting?

A. Well, he had all the tenants to get together in the downstairs of our house, I mean that big house.

Q. Where is that at?

A. 424 East 15th Street.

Q. Do you recall who all was present at that time? [59]      A. Yes; I do.

Q. Would you please name the parties that were there?

(Testimony of Berdie Mae White.)

A. I surely will. Mrs. Ernestine Coleman, Mrs. Pearl Hildreth, my husband, Willis White, Berdie Mae White. I think that is about all I can recall right at the present.

Q. And Mr. Hammond?

A. And Mr. Hammond.

Q. What did Mr. Hammond say, if anything, and what did any of you people say, if you can tell at this time?

A. Well, he said the rent had gone up to \$50.00 a month. He said we could pay it if we wanted to or we could get out, or we could go to the OPA and use that attorney if we wanted to. We could pay it if we wanted to; if not, we could do the next best thing.

Q. What did you do?

A. I went to the OPA as he advised me to.

Q. After this conversation with Mr. Hammond and your subsequent trip to the OPA, how long after that did you go to the OPA, how soon?

A. Well, I went the very next day, and they told me that I was paying too much rent; the ceiling price was only \$16.00.

Mr. Sinclair: I move that go out.

Mr. Hirst: That is all right to go out, your Honor.

The Court: The last expression may be stricken.

Mr. Hirst: I just wanted to know when she went.

Q. After you had been to the OPA how much rent did you continue to pay Mr. Hammond?

(Testimony of Berdie Mae White.)

A. I mailed Mr. Hammond \$16.00 a month.

Q. Where did you mail it to?

A. 421½ East 25th Street.

Q. East 25th? A. East 25th.

Q. Is that the manner in which you paid your rent from that time on? A. Yes, sir; it is.

Q. Mailed it each month to him?

A. Yes, sir.

Q. Is that the amount of rent you have paid since that time? A. Since that time; yes, sir.

Q. \$16.00 a month? A. Yes, sir.

Q. Have you ever seen Mr. Toobert before today? A. Yes, I surely have.

Q. On approximately how many occasions have you seen Mr. Toobert?

A. Oh, I have seen him on several occasions but I have only had a conversation with him twice.

Q. On each time you have seen him where has that been? [62]

A. 424 East 15th Street and 422 East 15th Street.

Q. Has he been there at the premises?

A. Yes, sir.

Q. By himself or with someone?

A. He was by himself.

Q. You stated on two occasions you had a conversation with him? A. Yes, sir.

Q. Do you recall when your first conversation with Mr. Toobert was?

A. Yes, sir. It was at 422 East 15th Street in the home of Mrs. Patrick. He came in to use the telephone.



(Testimony of Berdie Mae White.)

Q. When was this?

A. That was about in—let's see; about April of 1946.

Q. You say he came in to use the phone?

A. Yes, sir.

Q. And what was said?

A. Well, Mrs. Patrick was complaining about her screens being torn down, and she said, she remarked to him that we was paying \$40.00 and he should fix the screen or something like that. And he said, well, he would see about it; he was going to fix up all the houses later on.

Q. Is that essentially all that you can recall at this time?

A. That is all I can recall there at her home.

Q. You say you had another conversation?

A. Yes, sir; I did.

Q. Where did that take place?

A. In my home, the upper front at 424 East 15th Street.

Q. And in reference to time when did that occur?

A. That must have been—I think it was about in March of 1946.

Q. Was that before this other conversation?

A. Yes, sir; that was before this other conversation.

Q. The one you had with Mr. Toobert at your home was before this one?      A. Yes, sir.

Q. At Mrs. Patrick's home?      A. Yes, sir.

Q. Who was present at that time with Mr. Toobert?      A. My husband and myself.

(Testimony of Berdie Mae White.)

Q. Do you recall what Mr. Toobert said at that time, if anything?

A. Yes, sir. He came in and looked at the house. We was trying to paint it. We had bought some Kemtone and was going over the walls. And I remarked to him, "It seems like you all could paint the house, we are paying so much rent, paying \$40.00." And he said, "Well, I am going to fix them all up." He looked around. He wanted to see how they looked. He came out on the porch and in the kitchen [64] and examined them. I think he went next door.

Q. Did he just happen along or did he come in with any express purpose? Did he state why he came?

A. Well, he said he wanted to see what kind of condition they were in, if I make no mistake.

Q. Did Mr. Hammond ever give you receipts for rent?

A. No more than that piece of paper.

Q. I am talking about Mr. Hammond now.

A. Jack Hammond?

Q. Yes.

A. Yes, sir; just that piece of paper that time.

Q. Oh, you are talking about that piece of paper that you do not have any more?

A. Yes, sir.

Q. That you received when you first rented the place? A. Yes, sir.

Mr. Hirst: I believe that will be all.

Mr. Downing: No questions.

(Testimony of Berdie Mae White.)

Cross Examination

By Mr. Sinclair:

Q. What date was it that you first went down to the office of the Housing Expediter?

A. I can't recall the correct date, but I know it was sometime in July.

Q. May we see the money order or something you have [65] for this \$40.00 you paid Mr. Hammond?

A. I never said I paid him \$40.00 in a money order. I mailed him \$16.00 a month after I went to the OPA.

Q. How did you pay this money?

A. The \$16.00.

Q. No; not the \$16.00.

A. Or the \$40.00?

Q. Yes. A. Cash money.

Q. You paid it in cash? A. Yes.

Q. Was there anybody present upon any of those occasions that you paid \$40.00 to Mr. Hammond? A. Oh, surely.

Q. Well, who? Will you tell us who was present?

A. Well, several times Mrs. Davis and some others several times that I paid him.

Q. As a matter of fact this \$40.00 was given in part for rent and part for something else, isn't that right?

A. No. It was given him for rent was all.

Q. Maybe I am confusing you by this broad definition of rent. You paid \$40.00?



(Testimony of Berdie Mae White.)

A. Each month for rent.

Q. At that time did Mr. Hammond explain to you that part of that was for rent and part of it was for something [66] else?

A. No; he didn't.

Mr. Sinclair: All right; that is all.

Mr. Hirst: Your Honor, counsel has asked that question and I wish he would be specific as to what that something else is that you allege that you may have received.

The Court: I do not know. It is a form of question, I believe. He said it was something else.

#### Redirect Examination

By Mr. Hirst:

Q. Did you receive any additional services of any kind?

A. No; I haven't received any service at all, no kind of additional service. He did come out and put a coat of paint on the outside of the house and fixed some steps, you know, to the upstairs house, and he put some cement on the steps, and he asked for 15 more dollars for that.

Q. But no regular services? A. No.

Q. Or other kind of furnishings?

A. No, sir.

Mr. Johnson: May I ask this witness just a question or two?

#### Cross Examination

By Mr. Johnson: [67]

Q. In April you began paying your rent to Mr. Hall, is that correct? A. Yes, sir.

(Testimony of Berdie Mae White.)

Q. And why did you start paying your rent to Mr. Hall?

A. Well, Mr. Hammond said that he was busy doing some contracting work or something and he didn't have time to come by and collect this rent.

Q. And thereafter you just paid your rent to Mr. Hall?

A. Yes, sir.

Q. At this meeting that you referred to when he raised the rent was Mr. Hall present at that meeting?

A. I don't think so. I am not positive.

Q. Do you remember of him at any time discussing the raising of the rent?

A. Mr. Hall?

Q. Yes, Mr. Hall.                      A. No; I don't.

Mr. Johnson: I think that is all.

The Court: That is all.

Mr. Hirst: Call Mrs. Davis next, please.

ETHEL DAVIS,

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Ethel Davis. [68]

Direct Examination

By Mr. Hirst:

Q. Where do you live, Mrs. Davis?

A. 424 East 15th Street.

Q. With particular designation, what part of that address do you live in?

A. Upper rear.

(Testimony of Ethel Davis.)

Q. Upper rear. Who occupies that with you, anyone?      A. My husband and myself.

Q. Is your husband here with you?

A. Yes; he is.

Q. Do you recall at this time when you first moved into the apartment there?

A. I moved in December the 24th in 1945.

Mr. Johnson: I can't quite hear the witness, if your Honor please.

Mr. Hirst: Please speak up, Mrs. Davis.

A. I moved in in December 24, 1945.

Q. With whom did you make your rental arrangements for the rental of that particular apartment?

A. October 16, 1945 I paid Mr. Hammond \$10.00 deposit and the apartment was vacant the 24th of December in 1945.

Q. You paid him a \$10.00 deposit in October, is that right?

A. Yes. And on the 24th I paid his wife the other [69] \$30.00, for which she gave me a paper for a receipt there.

Q. Do you recall the conversation you had with Mr. Hammond when you rented this place? Did he tell you how much the rent would be?

A. Yes; he told me \$40.00 a month.

Q. I show you this brown scrap of paper, Mrs. Davis. Is this the \$10.00 receipt that you received from your deposit?

A. From Mr. Hammond. Instead of 16th it is the 22nd, but he wanted the rent day on the 16th.



(Testimony of Ethel Davis.)

Q. I show you now—

A. This Jack Hammond.

Q. —a white sheet of paper. Is this the receipt for the balance of the \$40.00?      A. Yes; it is.

Q. Is that the receipt Mrs. Hammond gave you?

A. Mrs. Jack Hammond.

Mr. Hirst: I will offer these two receipts as Plaintiff's Exhibit 7 next in order.

The Court: Admitted.

Q. By Mr. Hirst: Did you receive any more receipts from Mr. Hammond after that time?

A. No. He say he didn't give a receipt—period. He told me he don't give a receipt—period. I said, "You have to give me something to show that I paid my money." [70] He said, "Give me a book and I will put the month," the day I paid it on, but he didn't put like \$40.00 to January 16th until February the 16th.

Mr. Sinclair: Are we going to have those books offered in evidence, counsel?

Mr. Hirst: There are not any books; they are just papers. Your Honor, may I ask the witness?

(Counsel conferring with the witness.)

Q. I first show you this small sheet of paper with lines on it and ask you if those are the notations that were made each month when you paid your rent?      A. Surely.

Q. And by whom were they made?

A. Well, January 16th Mr. Hammond—

Q. What year does that represent?

A. 1946.

(Testimony of Ethel Davis.)

Q. All right; go ahead, please.

A. On February 16 I paid Mr. Hammond, in 1946; and in April 16 in 1946 I paid Mr. Hammond; May the 16, 1946 I paid Mr. Hammond.

Q. In other words, in those spaces where there are signatures or initials, those were paid to Mr. Hammond? A. Yes; it is.

Q. Is that the handwriting of Mr. Hammond or whose is it? [71] A. Yes; it is.

Q. As to the balance, there are initials in some instances "W. H.", and in others "W. E. H." Whose names does that represent?

A. Mr. William E. Hall.

Q. Did he place the signature there himself?

A. Yes; he did.

Q. Did you on each occasion where there was a notation added every month, was that in response to payment by you of \$40.00 a month?

A. Yes; it was.

Q. Now directing your attention to the second sheet here, the larger size, unlined sheet of paper which contains some notations beginning in January, 1947, is your testimony the same as regards that sheet?

A. January the 16th until February the 16th paid \$40.00 to Mr. Hall; February to March paid \$40.00 to Mr. Hall. Here where it says "paid for March \$40.00", Mr. Hall, there is his signature there. "Paid for April W. E. H." is Mr. Hall; May, Mr. Hall, \$40.00; June paid Mr Hall \$40.00; July, \$40.00 to Mr. Hall.

(Testimony of Ethel Davis.)

Q. That is in Mr. Hall's handwriting, is it?

A. Yes; it is.

Mr. Hirst: I offer both these exhibits as one, Plaintiff's Exhibit 8 next in order. [72]

The Court: Admitted.

Q. By Mr. Hirst: Mrs. Davis, you mentioned that you went to the OPA in July, 1947.

A. Yes.

Q. Do you recall anything that occurred immediately prior to your going to the OPA?

A. In July, 1947, Mr. Hall comes up. He says, "Mr. Hammond say everybody be at meeting downstairs in my apartment at 7:00 o'clock." I was there. So he wanted to go up to \$50.00 a month. So he asked me did I want to pay the 50? I says, "No." I says, "Because I think I am paying too much at 40 now." He says, "Well, those that don't want to pay the 50 can do what they want to do, the best thing to do." That is what he told me. So, after then, after I checked on my rent, it was \$12.00 a month.

Q. Who made those statements that you have just testified to? A. Mr. Hammond.

Q. I see. Was this at the meeting that they were made? A. Yes; it was.

Q. After that what did you do?

A. Well, after that I went to the OPA.

Q. And after that with reference to paying your rent what did you do?

A. Well, when I went there and they told me I was [73] paying over ceiling—



(Testimony of Ethel Davis.)

Q. No. Don't state what they told you at that time, but just what did you do after you went to the OPA?

A. I mailed him his rent, which was \$12.00 a month.

Q. To whom?           A. To Mr. Hammond.

Q. And has that been true ever since?

A. Yes; it has.

Q. Was that true of last month, on the 16th of March—this month, I should say?

A. I paid at that time until the 16th of March and I haven't paid my March because I have a slip "Mary G. Davis" and I don't know who to pay my rent to.

Mr. Sinclair: I don't see the purpose of this. What has that got to do with it, your Honor, raising the rent?

Mr. Hirst: We will skip that.

Q. Were you ever present when Mrs. Berdie Mae White paid her rent?           A. Yes; I was.

Q. Do you recall at this time any specific occasion on which time you were present?

A. I was present, I think it was February, 1947.

Q. February in 1947?           A. I think it was.

Q. What happened at that time? [74]

A. Well, I seen her pay Mr. Hall.

Q. What?           A. \$40.00.

Q. How was it paid, in cash or check or what?

A. Cash.

Q. Did Mrs. White get a receipt for it?

(Testimony of Ethel Davis.)

A. Well, I didn't see her with any after she paid it.

Q. You actually saw the money change hands, did you?      A. I sure did.

Mr. Hirst: That is all.

Cross Examination

By Mr. Sinclair:

Q. Mrs. Davis, you say you saw Mrs. White pay Mr. Hammond some money?

A. Yes; I did.

Q. What date was that, again?

A. I didn't say the date. The month of February, 1947.

Mr. Hirst: That is Mr. Hall she is talking about.

Mr. Sinclair: Mr. Hall. I beg your pardon. I thought you mentioned Mr. Hammond. I will withdraw that question.

Q. Mrs. Davis, those notations that were made here, how much did you give Mr. Hammond each time that you paid that money?      A. \$40.00.

Q. I see. Can you explain why on these notations [75] "\$40.00" is on the receipt and on here it is not, or vice versa?

A. Mr. Hammond say he doesn't give receipts.

Q. I see.

A. He said when he wrote that "\$40.00".

Q. In other words, your testimony is that he made this out and appended his initials to it?

A. He did that.

Mr. Sinclair: No further questions, your Honor.

(Testimony of Ethel Davis.)

Mr. Downing: No further questions.

Mr. Johnson: I would just like one or two questions, if your Honor please.

Cross Examination

By Mr. Johnson:

Q. Mrs. Davis, in referring to this document. Exhibit No. 8, can you tell us the first or will that refresh your memory as to the first time that you paid rent to Mr. Hall?

A. March the 16 in 1946.

Q. And you paid rent to him then through what month?

A. He skipped two months, April and May to June.

Q. Who did you pay that to in April and May?

A. Mr. Hammond.

Q. That was in 1946?

A. Yes. It was from June on I pays Mr. Hall \$40.00 a month. [76]

Q. And when did you make your last payment to Mr. Hall? A. July, \$40.00, in 1947.

Q. That is July of 1947? A. Yes.

Q. How did you happen to start paying your rent to Mr. Hall?

A. Mr. Hammond came up and said he did not have the time to pick the rent up; and he says "for you all to pay Mr. Hall from now on."

Q. This meeting that you referred to was Mr. Hall present at that meeting?

A. No; he was not.

Q. Did you have any discussion with Mr. Hall about the raising of the rent?



(Testimony of Ethel Davis.)

A. No. He came up once and told me that Mr. Hammond said, after he paint the steps and put some cement downstairs at the bottom step and he put two cement steps down there, he said, "Mr. Hammond says everybody pay \$15.00." And I said, "\$15.00." He said, "Yes." I said, "I can't pay \$15.00." He said, "Well, that was my orders."

Q. And you never did pay this extra 15?

A. I sure didn't.

Mr. Downing: That is all.

Mr. Sinclair: One further question. [77]

Q. The work of this cement construction, Mrs. Davis, was this done before you moved in or after you moved in?      A. What do you mean?

Q. I mean this painting and this substantial cement construction, the steps, and so forth?

A. It was after I moved in, but the steps doesn't connect on with my apartment because it is downstairs and I live upstairs.

Q. In other words, they put a staircase or steps up to your place?

A. Just put a step up on the back. I don't know who it was to.

Mr. Hirst: Your Honor, there are a couple of questions that I intended going into on direct and I forgot to do that. I ask leave of the court at this time to ask the questions.

The Court: All right.

(Testimony of Ethel Davis.)

Further Direct Examination

By Mr. Hirst:

Q. Mrs. Davis, have you ever seen Mr. Toobert before today?      A. Yes; I have.

Q. Do you recall on how many occasions you have seen him?      A. A couple of times.

Q. And on each time where did that take place?

A. Well, I seen him downstairs. I didn't have a conversation with him downstairs, but in October in 1946.

Mr. Downing: I can't hear, please.

A. In October, 1946 he came upstairs and he says, "I am the owner and I want to look the place over. I am going to have some repair work done on it." And I says to him, to Mr. Toobert, "In the kitchen the back glass it broken out." And I said, "My apartment is supposed to be furnished but it is unfurnished." And I said, "Which you know that we are paying \$40.00 a month." He said, "Well, I can't do anything about that," he said, "but if you want to buy the property," he say, "I will give you a nice bargain on it."

Q. Is that the gist of the conversation as you recall it at this time?

A. Sure. I think he gave me his address at 1417, I think it is, Kelman Avenue and he gave me his name.

Q. Kelman, K-e-l-m-a-n?

A. And he told me if I wanted to buy the property to see him at that address.

Mr. Hirst: That is all.

Mr. Downing: No questions.

Mr. Hirst: Mrs. Felder, please. [79]

LEANA FELDER,

called as a witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Leana Felder.

Direct Examination

By Mr. Hirst:

Q. Mrs. Felder, where do you live?

A. 4603 Staunton.

Q. Do you know Mrs. Ethel Davis, the woman who was just on the stand? A. Yes; I do.

Q. Are you any relation to her? A. No.

Q. Were you ever present on any occasion where Mrs. Davis paid her rent for the premises that she occupies on 15th Street?

A. Yes; I was.

Q. Do you recall specifically any occasion at which you were present?

A. In 1946, in January, on the 16th, when she first paid Jack Hammond, I was there then.

Q. You were there then. Did you see her actually pay the money to Mr. Hammond?

A. Yes; I did. I saw her count out the \$40.00 to him. [80]

Q. Who else was present, do you recall?

A. Just she and I and Jack Hammond.

Q. Where did that transaction take place?

A. 424 East 15th Street.



(Testimony of Leana Felder.)

Q. At her place? A. Yes, sir.

Q. Have you seen her pay it on any other occasion?

A. Yes; I did. I saw her pay Mr. Hall.

Q. Mr. Hall on other occasions. Do you remember at this time any particular transaction?

A. It was in April, in 1947, on the 16th.

Q. Where did that take place?

A. At her house, 424 East 15th Street.

Q. How much did Mrs. Davis pay Mr. Hall at that time? A. \$40.00.

Q. Was that in cash also? A. Yes.

Mr. Hirst: That will be all, your Honor.

Mr. Sinclair: No questions.

Mr. Johnson: No questions.

Mr. Hirst: At this time, your Honor, I wish to call Mr. Hammond as an adverse witness, your Honor.

The Court: All right; take the stand. [81]

**JACK C. HAMMOND,**

one of the defendants herein, called as an adverse witness by the plaintiff, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Jack C. Hammond.

**Direct Examination**

By Mr. Hirst:

Q. Mr. Hammond, you have heard the testimony of the various witnesses that preceded you on the

(Testimony of Jack C. Hammond.)

stand to the effect that they paid you rent on a number of occasions. After they paid you the rent what did you do with it?

A. Well, I took \$18.00 of it and gave it to Mr. Toobert each month, and the other \$22.00 I put it aside until I had gotten enough to fix up those houses that wasn't in no living condition when I taken them over from Mr. Toobert.

The Court: I can't understand. Speak louder, please.

A. Yes, sir. I taken the \$18.00 of the money that they gave me and paid Mr. Toobert.

The Court: Mr. Toobert?

The Witness: Yes, sir. And the other \$22.00, I put it in those places to fix them up to live in. They wasn't in no condition to live in. They was condemned. And I told them, each, before they went in there that the property was not suitable for living, which it wasn't. So Mrs. Coleman, the first one asked me for the house, I told her as soon as [82] I got them in condition for living I would let her have one. So I couldn't seem to get enough money to do it, so I asked Mrs. Coleman if she would pay \$18.00 for the rent and pay \$22.00 a month, each month, more to get a repair of the house. She agreed to it. So I gave her not rent receipts, but I did give her a receipt to let them know they were paying \$18.00 for the rent and \$22.00 for fixing up the house.

So each one that came along and asked me for a place to stay, they all agreed to it that they were

(Testimony of Jack C. Hammond.)

willing to pay \$40.00, which was \$18.00 for the rent and \$22.00 for the repair to get those houses in order to live in. So I did, and after they was in there a while, then I got enough to start fixing them, of which I have all the bills here where I did the work on the houses and got them in living condition.

After they got in living condition, then I told them then to don't pay any more than the \$18.00 because they already had enough money paid on the place to get them fixed up. So they then paid \$18.00 after that. That was during the month of August, last year, but wasn't nobody in the places. I notice that this said "October", but there wasn't nobody there in October. The first person moved in there was Mrs. Coleman. She stated right at the time she went in there. She went in there in December. So in this case after December, then they all moved in and in order to straighten themselves out with the houses they did pay \$22.00 more to [83] make the \$40.00. So after that I furnished them all gas and light and water and furniture, and I have all the bills to prove where I did it. In place of the houses making me any money they got me in plenty of debt because I am not even finished paying for the work that was done on the houses. I put down concrete porches, concrete steps, plumbing and repairing all over the whole house, windows, screen, everything, because the houses didn't have none of them in them. Since that they broken them out again. I didn't never try fixing them any more be-



(Testimony of Jack C. Hammond.)

cause they just continue getting me in debt here, and I have bills here that I never have paid yet.

So I just told Mr. Toobert I would give the houses up because it is too much. I have a light and gas bill now that I have to pay, that has got my name on it. I haven't even paid that yet. I don't even have the money to pay them with. So therefore I just gave the whole business up in October.

The Court: Were you renting these apartments to these different people here yourself?

The Witness: Yes, sir.

The Court: You were renting them yourself?

The Witness: Yes, sir.

The Court: What did the other defendant have to do with it?

The Witness: Owner. Who?

The Court: Mr. Toobert. [84]

The Witness: Toobert, yes; he is the owner. I don't know, frankly speaking, if he is or not. I was renting from him.

The Court: You were renting from him and renting to these others, is that it?

The Witness: Yes. First, Mr. Toobert decided to sell me the place.

The Court: After that you rented, you said, to these other people?

The Witness: Yes, sir.

The Court: Did you spend all of that \$22.00 a month, as you say, every bit of it on improving these places?

(Testimony of Jack C. Hammond.)

The Witness: And more than that, because I am in debt now with it. All of that and more. I have had the plumber go over there twice and unstop the sink upstairs. I just ran out of money for the plumbers going up there. All of it went into it and more of my money. I even owe people money now what I borrowed from them to keep the places going. I even stopped from going to church because of it.

The Court: You didn't want to be stopped from going to church?

The Witness: I turned around several times because I was in anger on my way to church, to leave the house all messed up. The mess all run over out the hall, downstairs, in Mr. Hall's apartment. [85]

The Court: Is that before you went to church?

The Witness: Yes. I went back home. I didn't have no courage going to church.

The Court: You went back after without going to church?

The Witness: I couldn't go there that Sunday after I saw that mess all over the house.

The Court: You couldn't go to church?

The Witness: No, sir; because I wouldn't feel right inside.

Q. (By Mr. Hirst): You say you turned over the \$18.00 for each of these rentals to Mr. Toobert each month?      A. Yes.

Q. Was that the rentals you were turning over? Did you understand that to be rentals?

A. That was the rent he charged me for it.

(Testimony of Jack C. Hammond.)

Q. You were renting the entire premises from Mr. Toobert, were you, for your own use?

A. Yes, sir. I was renting the big house first because I had an eviction to move and I didn't have no place to go. So after I took the big house I didn't move in it because we couldn't live in it. So I just put a club in there and then after the club I just rented it out to Mr. Hall and Mr. Hall started collecting the rent in February, 1946.

Q. He collected the rents for you, is that right?

A. Yes. [86]

Q. He turned the \$40.00 over to you each time?

A. Yes.

Q. How did you happen to determine to charge \$18.00 each for these apartments?

A. Well, I just told them that that was the rent.

Q. Did you check with the OPA first?

A. I did.

Q. Did you know that the rent on the apartment for the second floor rear at 424 East 15th Street was \$12.00 a month?

A. I knew about all of them but the downstairs at 424.

Q. But you charged 18 instead of 12 for that upper rear of 424, is that right?

A. That is right: I was collecting 12 for the rent and—

Q. Do you have—

The Court: Wait until he gets through. What did you say you were doing, collecting the 12 for



(Testimony of Jack C. Hammond.)

what?           The Witness: For the rent.

The Court: And the rest of it for what?

The Witness: For the fixing up of the place.

The Court: For improvements?

The Witness: And the light and gas and water and so forth, furniture, I had all that to pay.

Mr. Hirst: Just a moment. [87]

Q. Did you go to the OPA before you started to rent these places?           A. I did.

Q. Did you inspect the OPA rent registration statements?           A. I did.

Q. These are the ones you inspected?

A. Yes, sir.

Q. I will call your attention to the fact that on each of these statements it states in item No. 2 "services" to be furnished.

You have already seen these, counsel.

Mr. Sinclair: Yes. I want to say, your Honor, that it is subject to our same objection that this is not properly before the court as the maximum rent for those premises.

The Court: Overruled.

Q. By Mr. Hirst: I call your attention to the fact that on each of these registration statements—I had better use the exhibits that are already in evidence—under the heading "Services" where it refers to interior and exterior repairs at the very bottom of the column on the right-hand side of the statement, it asks for the owner to "check the equipment and services included in the rent on March 1, 1942 or the most recent date you entered

(Testimony of Jack C. Hammond.)

in Section C.” Now, did you note that? You said you inspected it. A. No; not that. [88]

Q. Did you not inspect that part?

A. No; I didn’t inspect what the rent for—

Q. These were shown to you, were they not?

A. Just what they were rented for.

Q. The whole statement was shown to you. You were given a chance to look at it, were you not?

A. Well, that is on there with the rent.

Q. In other words, you did not bother to check that part of it as to whether you had the obligation to furnish the services or not?

A. No; I did not. I did not.

Q. When you were renting these places how much money did you turn over to Mr. Toobert in the aggregate? Did you turn it over depending on how much you took in or did you turn over a flat sum every month?

A. A flat sum every month.

Q. How much was that?

A. When I first taken that, I turned over \$150.00 to him every month for one year.

Q. You have been collecting the rent on these places right up to last month, have you not?

A. No, sir; I haven’t.

Mr. Sinclair: Objection to that, your Honor. The issue—

The Court: He says, “no.”

Mr. Hirst: That will be all, your Honor. [89]

(Testimony of Jack C. Hammond.)

Cross Examination

By Mr. Sinclair:

Q. Mr. Hammond, do you have any receipts or bills indicating what payments you made for this reconstruction business?

A. Yes; I have some of them.

Q. I first want to ask you this: When Mrs. Coleman moved in there, prior to the time she moved in did you have any agreement with her as to whether she would pay for this separate work to be done?

A. I did.

Q. Prior to the time that Mr. Jeffery Gassaway moved in did you have any agreement with him that he would pay for this separate work to be done?

A. All of them.

Q. Would your answer be "yes" if I asked you that for Mrs. Pearl Hildreth?

A. Yes.

Q. And Mrs. Ida Mae Patrick?

A. Not Mrs. Pearl Hildreth. I didn't even rent to her. I rented to Mr. Gassaway.

Q. How about Mrs. Berdie Mae White?

A. Yes.

Q. And Mrs. Ethel Davis?

A. Yes. [90]

Q. Is it your testimony that this agreement was a separate agreement as far as this reconstruction?

A. I wrote it down in each one in this book.

Q. In other words, this money that they did pay you, part of it was for rent and part of it was for this separate agreement?

A. Yes, sir. [91]



(Testimony of Jack C. Hammond.)

Cross Examination

By Mr. Downing:

Q. The rent registration statements, Mr. Hammond, which have been shown to you a little while ago relate to 422, 422 $\frac{1}{4}$ , 422 $\frac{3}{4}$ , 424 second floor rear, and 424 second floor [94] front at East 15th Street, just those five units. Now, the premises there include other living units besides these five, do they not? A. No.

Q. Is there a 422 $\frac{1}{2}$ ? A. Yes.

Q. All right; there is? A. Yes.

Q. And there is a ground story or first floor of the house known as 424, is there not?

A. Well, just the one you mentioned; yes, sir.

Q. Yes. And there are on the second story of 424 three separate units which you will rent to three separate tenants, are there not?

A. On the second floor only two.

Q. There are only two? A. That is all.

Q. Then the ground floor consists of the premises in which you live, is that correct?

A. Yes, sir.

Q. And you also maintain this club there, is that correct?

A. That is what it was, a club.

Q. How many rooms on this ground floor of 424? A. Five. [95]

Q. Is that all? Well, there is a five-room unit on the ground floor, and then there is a separate house, 422 $\frac{1}{2}$ , which is not involved here in any overcharges? A. That is right.

(Testimony of Jack C. Hammond.)

Q. The amount which you paid to Mr. Toobert was originally \$150.00 a month, is that right?

A. For the first 12 months.

Q. And you and he had certain oral negotiations concerning that property before you took it over, didn't you?      A. Right.

Q. What?      A. That is right.

Q. And it was tentatively agreed that he would sell it to you and you would buy it from him for a total price of \$17,500, is that right?

A. That is right.

Q. And these payments which you made to him were originally made in pursuance of that agreement to buy and sell, is that right?

A. That is right.

Q. Your wife is named Octavia Hammond?

A. At that time, yes, sir.

The Court: When you rented these rooms to these different people that testified here were they to pay all their own gas and light themselves, outside of the rent? [96]

The Witness: No, sir; I paid for that.

The Court: They just paid for the use of the place, and then were they to pay independent of that for gas or light, electric light, or did they pay it themselves?

The Witness: In 422 and 422 $\frac{1}{4}$  and 422 $\frac{3}{4}$  paid their gas and light, but I paid the water, and 424 upper and top and ground floor I paid the gas, light and water.

The Court: Was that included in the rent or was that separate?

(Testimony of Jack C. Hammond.)

The Witness: That was included in the rent.

The Court: All right. What were they to pay, then, if anything, beyond the rent?

The Witness: All they was paying was the \$18.00 for the rental, and the \$22.00, as I say, went for that repair work.

The Court: I am speaking of this light and gas. Were they to pay that in the rent they paid you, or were you to pay it out of this rent?

The Witness: Yes; I paid it myself.

The Court: I mean was that your understanding with them that you would take care of that?

The Witness: Yes, sir.

The Court: You said next door about certain payment of gas and lights that you paid?

The Witness: Yes, sir. [97]

The Court: How much of it was included in the monthly rent that they were to pay?

The Witness: Yes, sir.

The Court: What did you pay in addition to this monthly rental, then? What did you do with that?

The Witness: I fixed the house.

The Court: That was not included in the rent, as you understand it. What was it? What did you do for this extra charge you were making?

A. Well, I paid the gas, light, water and everything for the houses. Besides that, I taken the responsibility on myself and got enough material, which was sand, cement, and so forth, to make concrete steps, concrete porches all around the entire



(Testimony of Jack C. Hammond.)

houses, and rat-proofing, which is why the Board of Health condemned it, and screened all around the houses. And then we put in new windows, new screens in the houses, such as walls and then paint them, and then we had the rubbish man to move out a whole yard, which ran to \$200 just to clean the tin cans and things up around the houses. And it was mostly condemned because I didn't have an incinerator and the inspector made me buy new incinerators, and so forth. I bought one and they said it was not enough and I had to buy two of the incinerators to burn trash. The windows were all out. I put in new windows in all the houses.

The Court: Can anybody live in there? [98]

The Witness: Oh, yes; they can live in there now. The Board of Health okayed it. But I told them before, the condition they were in, I couldn't rent them unless they come under that agreement. And they say they will agree to do that. Then after they moved in there I did that. We was getting along fine and I used to go by there Sunday, as I say, to see how they were getting along. But they were stopping up the toilets all the time.

The Court: You claim you had that agreement with them?

The Witness: Yes, sir; they all agreed with it.

The Court: Would you agree with them when they said it applied otherwise? They said it only included rent.

The Witness: They was probably trying to get something, but I am sure if they would tell the

(Testimony of Jack C. Hammond.)

truth, I am sure they would tell that the agreement was made up like that, because that was before the houses was repaired. I even repaired them before they even moved in there, and they moved in there with that understanding, because I made them all out a contract of paper and put in their books to that effect. I don't see why they didn't bring the books down. They tore out several. They wouldn't bring the whole book down because they know that is in the book.

The Court: Speaking of the book, did you make those entires in the book or did they? [99]

A. I made the contract in the book and give them each a book, but they tore out the pages.

The Court: Didn't you keep a copy of the contract? The Witness: No, sir.

The Court: You just turned it over to them?

The Witness: Yes, sir. Mr. Kelly, the plumber, he charged me \$40.00 every two weeks or so to go up and take this Kotex out of the toilet.

The Court: You were to keep up the place in good condition, the windows and all that?

The Witness: Yes. After they took possession I was to keep it up, but I had it understood it had to be in condition to rent. That is the reason I made out the contract to them, because it wasn't in condition in the first place to rent.

Mr. Sinclair: Shall I proceed, your Honor?

The Court: Yes.

Q. By Mr. Sinclair: So for about a year you paid Mr. Toobert \$150.00 each month?

(Testimony of Jack C. Hammond.)

A. Yes, sir.

Q. And then that sum was reduced by oral agreement between you and Toobert, was that right? A. Pardon?

Q. Then you and Toobert agreed that instead of \$150.00 you should only pay \$125.00, is that right?

A. That is right. [100]

Q. And at or prior to that time you had told him that you did not wish to continue with your plans to purchase the property, is that right?

A. That is right.

Q. And thereafter you paid him \$125.00 each month? A. Yes, sir; that is right.

Q. How long did that continue?

A. That continued up until—that continued up until entirely taken out of my care.

Q. You do not remember the last time you made the payment to Mr. Toobert?

A. About a month ago.

Q. What?

A. A month ago. The last payment I made to him was in February.

Q. You had never rendered any statement to him of the various rents you collected, did you?

A. No; I didn't.

Q. You did not. And you never rendered any statement to him of the various items of disbursement you had made about or in connection with the premises, did you? A. No, sir.

Q. You did not do that at all? A. No, sir.

Q. And you signed up for the water service.



(Testimony of Jack C. Hammond.)

A. I did.

Q. And the water was in your name?

A. Yes, sir.

Q. And the bills came to you?

A. Yes, sir.

Q. And you paid the water bills?

A. Yes, sir.

Mr. Sinclair: That is all. Your Honor, at this time in behalf of—

Mr. Hirst: I would like to ask one question, your Honor.

The Court: Are you through questioning this witness?

Mr. Sinclair: Well, yes, your Honor.

Mr. Johnson: No questions.

The Court: Very well. Let us get through with this witness.

### Cross Examination

By Mr. Hirst:

Q. Are you still paying to Mr. Toobert \$125.00 a month?

A. No; I don't have any more to do with it.

Q. What happened last month? You paid up last month, you say?

A. Yes; I did.

Q. What did you do, turn it back to Mr. Toobert, the house?

A. Yes; I did. [102]

Q. As far as you know Mr. Toobert owns the house now, does he?

A. I didn't own it at first.

Q. You were buying it from him?

(Testimony of Jack C. Hammond.)

A. That is what he said. I never did get no written contract to it.

Q. No written agreement of any kind that you were purchasing it? A. No.

Q. And you never checked to see if Mr. Toobert was the owner or not? A. No; I didn't.

Q. You were just buying it—

Mr. Sinclair: If your Honor please, that is argumentative. The fact is under California law these parties were perfectly free to enter into an oral agreement for its purchase. There has been no testimony that he bought the property from Mr. Toobert, so I think it is immaterial, in fact, that counsel is alleging that there was this oral agreement. It is already testified—

The Court: In whose name does the legal title to this property stand?

Mr. Downing: I will stipulate—

The Court: You own the property?

Mr. Downing: —it did stand from June, 1945 until [103] September, 1947 in the names of Ewell Toobert and Marcella Toobert.

The Court: Then what became of it?

Mr. Downing: In September, 1947 Ewell Toobert and Marcella Toobert sold and conveyed the property and since have had no further interest in it.

The Court: To whom?

Mr. Downing: I don't know, offhand, your Honor. The Excell Realty Corporation nominally. I will state that I examined the county records during the

noon recess today and the records show those conveyances.

The Court: All right. [104]

Mr. Downing: If the court please, on behalf of the defendant Toobert I should like at this time to move for a dismissal under Rule 41, on the ground that the evidence is insufficient to establish any liability on his part in this; that there is no evidence from which an inference or reasonable deduction may be drawn that he was the principal and that Hammond was the agent.

The only evidence before this court indicates but to the contrary. Hammond collected the rent in and of his own right, and that he was either a vendee or a tenant of the defendant Toobert. I want to be very brief.

A second point is this: Counsel has denominated this action as different than a straight action for a money judgment based upon a receipt of overpayment of rent, but he calls it an equitable action for restitution.

Bearing that in mind, then, and bearing in mind the language of the Fifth Circuit in the case *Gordon v. Randolph*, decided January 20, 1948, which reads:

“Plaintiff asks for an order of restitution which, if granted, would be in its nature a mandatory injunction. It would resemble an order in bankruptcy to turn over property of a bankrupt to his trustee.”

In other words, it is in the nature of an action where there is a specific res or a specific thing or at



least a [111] specific amount of money in which the defendant has been unjustly enriched and which equity requires him to contribute to the plaintiff who has been unjustly deprived of it.

Now, the only evidence in this case shows nothing of that sort as to the defendant Toobert. We do not have before us ceiling rentals, maximum rentals as to the entire premises here involved. We have the maximum rental of five units. There are two further units as to which there is no evidence as to whether or not there was any maximum rent—not all premises require it—and that was what that maximum rent was. The only evidence is that Toobert received \$150.00 a month for about one year, thereafter about \$125.00 a month. There is no evidence that the money received by Toobert in the sum, first, of \$150.00, then later, in the sum of \$125.00 exceeded at all the maximum rentals on the premises.

The Court: What is that regulation referring to lessees or purchasers from the owners of property that is being rented?

Mr. Hirst: The lease with option to buy, your Honor?

The Court: Yes.

Mr. Hirst: I will read from the pertinent part, your Honor, of Section 2, subdivision (c), headed “Lease with Option to Buy,” and I will read from the last long sentence in the paragraph. It says:

“Where a lease of housing accommodations has been entered into on or after the effective date of [112] the regulation (or on or after Oc-

tober 20, 1942 where the effective date of the regulation is prior to that date) and the tenant as part of such lease or in connection therewith has been granted an option to buy the housing accommodations which are the subject of the lease, a landlord, prior to the exercise by the tenant of the option to buy, shall not demand or receive payment in excess of the maximum rent, whether or not such lease allocates some portion or portions of the periodic payments therein provided as payments on or after the option to buy.”

That is the section your Honor refers to.

The Court: What does your evidence show about the amount that he has received?

Mr. Hirst: I must admit, your Honor—

The Court: Of course, you have not introduced any evidence, only the witnesses, as to who owned this property, Toobert, and that on that basis that he had a lease there.

Mr. Hirst: The only evidence we have submitted, your Honor, in addition to that, is the testimony of various of these tenants.

The Court: Of course, the lessee and the owner had knowledge of these rent payments.

Mr. Hirst: He actually had conducted himself on the premises as an owner would do. In other words, he showed [113] interest in damage to the property and inspected the property; he made promise of certain repairs, which would be strictly within the realm of the operation of an owner, especially an owner, to keep it up in repair.

The Court: I will overrule that motion at the present time and let the evidence develop and see just what it develops with regard to the situation between Hammond and the owner. So you may proceed.

The Clerk: Motion denied now, your Honor?

The Court: Yes; denied now.

JACK C. HAMMOND,

a defendant herein, having been previously sworn, recalled as a witness in his own behalf, testified as follows:

Direct Examination

By Mr. Sinclair:

Q. Now, Mr. Hammond, with reference to this agreement that you testified to on cross examination, will you tell us what you did in pursuance of that? I might save time by telling you to limit your testimony, not to services like light, and so forth, but as far as this agreement to construct, remodel, and so forth, and tell the court what you have actually done or caused to have done.

A. Well, first, I installed windows.

The Court: You are speaking about an agreement with the tenants? [114]

Mr. Sinclair: Yes, your Honor.

The Court: All right; go ahead.

The Witness: Agreement with the tenants that they saw the condition of the houses.

Q. By Mr. Sinclair: Was the house fit for habitation?



(Testimony of Jack C. Hammond.)

A. No; it was not. That was the condition and then they wanted to live in them.

Q. Tell us what was done, Mr. Hammond. You have already been over the agreement. Now just tell us what was done in pursuance of that agreement.

A. First, I installed window panes, next, screened the windows, next, a porch, put a new porch on it because the porches were all broken down and several of them you could not even get in the house on account of the porch was too far down on the ground. So I put new cement porches, new cement steps in all of the courts. All of them had the same.

Q. Do I understand you completely tore out the old porch? A. Had to tear it out.

Q. You tore it out?

A. Old lumber. Yes; they were rotting down.

Q. It required substantial alterations, did it?

A. Yes.

Mr. Hirst: That calls for a conclusion, your Honor.

A. Yes; it did. And that was solid concrete porch [115] and solid concrete steps. And the lights, the wiring, and the doors and windows, and the rubbish around under the houses and in the yard. The incinerators and bathtubs and toilets. In other words, new plumbing in altogether in the entire house. Of course, I didn't have enough money to do that.

Mr. Sinclair: Just a moment now.

(Testimony of Jack C. Hammond.)

Q. With relation to Mrs. White or Mrs. Davis, the one that had the upstairs, she testified that you put stairs or something. A. Yes; I did.

Q. What about that; did you just repair the stairs that were there or what did you do?

A. I repaired the stairs and put concrete steps at the bottom of the stairs.

Q. Mr. Hammond, what amount or what price did you pay for this material, do you know? Do you have any receipts or have you an estimation?

A. Yes; I have a few. Yes; I estimate \$1,150.85.

Q. What does that represent?

A. That represents just the concrete porch steps.

Q. Is that the labor or just the materials that you bought for that?

A. I am not counting my labor.

Q. That is just the minimum? [116]

A. I am not counting the labor. I paid the other fellows for my help.

Q. As a matter of fact, Mr. Hammond, did you do some of that work yourself?

A. I did it myself.

Q. Are you a contractor and so forth?

A. Yes, sir; yes, sir. And, of course, I paid the help a dollar an hour. Three boys helped me.

Q. Mr. Hammond, did you contract for any additional services for your tenants? First, I will ask you this: Were you obliged by this previous rent regulation to perform any services about the house as far as your labor is concerned?

A. No; I was not.

(Testimony of Jack C. Hammond.)

Q. Were you required to do any cleaning?

Mr. Hirst: Your Honor, that calls for a conclusion and conjecture. It calls for a conclusion, but the registration itself is the best evidence of it.

The Court: I understand it.

Mr. Sinclair: I ask him to look at it, then, your Honor.

The Court: The regulation is the best evidence on that, unless he was notified or had some transaction otherwise with the regulation people.

Mr. Sinclair: All right.

Q. Now, Mr. Hammond, did you have any separate agreement to perform any extra or excess services or something [117] with the tenants?

A. No.

Q. I believe you testified, if the reporter will bear it out, that you did something under the house or something.

A. Yes. I put down some four-inch soil pipes under the house.

Q. And the other pipes have been merely repaired, or did you replace them only?

A. I had to replace four that were busted.

Q. Just one last question, Mr. Hammond. Let me see if I understand your testimony. The houses were not inhabitable before you had this agreement with the tenants, is that correct? A. Yes, sir.

Q. In other words, to get a place to live they agreed to pay you this money to rehabilitate the premises, is that correct? A. Yes.

Q. Is that the testimony you are wishing this court to understand? A. Yes, sir.



(Testimony of Jack C. Hammond.)

Q. Is that substantially what was done?

A. Yes, sir.

Q. That you merely paid out the money for those things?      A. Yes, sir. [118]

Q. Was that work done in pursuance of that agreement?      A. Yes, sir.

Mr. Sinclair: That is all.

### Cross Examination

By Mr. Hirst:

Q. You state that all these premises at the time that the different tenants rented them were not fit for habitation?      A. No, sir; they was not.

Q. You didn't do anything ahead of time to put them in a condition to be inhabited, is that right?

A. No, sir; I didn't.

Q. They moved in and then you did this work afterwards?      A. Yes, sir.

Q. You state that on each case with reference to all those tenants that testified, that you had a previous understanding that everything over \$18.00 was to help you improve the property so they could live there, even though they were already living there?      A. Yes, sir.

Mr. Hirst: That is all.

Mr. Sinclair: That is all, your Honor; no further questions.

The Court: You are excused.

Mr. Sinclair: Just one more thing, your Honor. I don't know whether the court wants those files, etc., in evidence. [119] I thought perhaps counsel

(Testimony of Jack C. Hammond.)

would cross examine on that. Do you think it proper at this time to introduce the receipts and bills?

The Court: That is for you to decide. You are trying the case.

Mr. Sinclair: I don't want to needlessly waste the time. Well, that is all right, your Honor.

Mr. Downing: Will you take the stand, Mr. Toobert? Oh, excuse me. Do you have any further testimony?

Mr. Sinclair: No.

EWELL TOOBERT,

a defendant herein, called as a witness in his own behalf, being first sworn, was examined and testified as follows:

The Clerk: Will you state your name?

The Witness: Ewell Toobert.

Direct Examination

By Mr. Downing:

Q. Mr. Toobert, you are one of the defendants in this case? A. Yes, sir.

Q. You own the premises referred to in this testimony here as 422-424 East 15th Street, Los Angeles, California? A. Yes, sir.

Q. Did you buy that property, that is, you together with your wife? [120] A. Yes, sir.

Q. And when did you buy it?

A. It was recorded on the second day of June, 1945.

(Testimony of Ewell Toobert.)

Q. And thereafter did you have any conversation with Jack Hammond?

A. After that, in about a month later, I believe it was in July sometime, I got in contact with Mr. Hammond and I told him I will sell him the property for \$17,500, no down payment, \$150.00 a month. He came down and looked over the property. He says, "I will take it." I says, "Well, give me \$150.00." He says, "I will give it to you 30 days later. I haven't got it right now." Mr. Hammond will state that. From there on he paid me every month. Regardless, I didn't have nothing to do with the collecting. I never knew what he collects.

Q. That is all right. That is fine.

A. About a year—

Q. Was anything said by Jack Hammond as to how he wanted the property to be taken, whether in his name or in his wife's name?

A. To be taken in the name of Octavia Hammond.

Q. Octavia Hammond?

A. Octavia Hammond, and she was not here. She was in Texas. We drew up a contract but we never signed it, expecting her to come, and we dropped everything until about a year. [121] And then I told Mr. Hammond that I want him to pay this insurance. He says he is not going to go through with the deal, in a nice way. He says, "I will tell you what I will do, Mr. Toobert, if you want me to. I will pay you \$125.00, which is the OPA ceilings, and I will collect, myself, and I might



(Testimony of Ewell Toobert.)

move in, myself. I will need a home, and then I have some relatives that are coming from Texas. If I have a vacancy, I will be able to put them in." This will be to his benefit. He never made any statement to me about expenses on the income from the house. I never knew anything about it.

Q. Did you ever ask him?

A. I never asked him.

Q. It was not any of your business?

A. No.

Q. And thereafter, for approximately one year, then, it was about \$150.00 a month?

A. That is right.

Q. And thereafter you received \$125.00?

A. \$125.00 a month. That is it exactly.

Q. Did he ever render any statements to you covering receipts on that property?

A. No; nothing at all, because I had nothing to do with it. I had nothing to do with that. He paid me promptly.

Q. Did he ever notify you of any vacancies?

A. No, no; nothing at all. [122]

Q. You did visit the premises occasionally, did you not?      A. I did, sir.

Q. Do you recall an occasion when there was a small fire there?      A. Yes, sir; I went there.

Q. And there was insurance on that loss and it was adjusted, is that right?

A. Adjusted, right. That is the only one time that the tenants knew that I am the owner.

Q. Did you ever pay the water bills for the premises?      A. No.

(Testimony of Ewell Toobert.)

Q. Or any utilities bills?

A. No, not even the first bill.

Q. Did you ever sign up for the water or any other utilities?

A. No, sir. Evidenced by the water and power company, my name was never on there.

Q. How long did you continue to own the property, you and your wife?

A. We had it since June the 2nd, 1945 until September the 5th, 1948.

Q. You mean 1948 or 1947?

A. '47, that is right. '48 isn't here. 1947. I am sorry. [123]

Q. And since that time you have had no interest in the property?

A. No. Since that time I have had no interest whatever. I sold it to Realty Investment Corporation, which is of record September the 5th.

Q. Did you cause a fire insurance policy to be taken out on a portion of that property?

A. Yes, sir. Then I had to cancel it.

Q. Now, just a minute. I will direct your attention to this instrument, Milwaukee Mechanic's Insurance Company policy No. D80549, issued January 22, 1946. Was this policy produced here in court today and delivered to you and to me by the office employee of the mortgagee of this property?

A. Yes, sir.

Q. The mortgagee is R. E. Allen?

A. R. E. Allen; that is right.

(Testimony of Ewell Toobert.)

Q. You do not have possession of this policy?

A. No.

Q. Did this secretary turn it over?

A. Yes; he turned it over to give him back.

Mr. Downing: Now, if the court please, the only materiality of this is to show that the insured includes Octavia Hammond under this policy.

The Court: It is proper to show it to counsel.

Mr. Downing: Yes; I did, I think, a while ago. Do you want to see it again? The mortgagee would like to have it returned. I wonder if I can read that portion into the record?

The Court: Yes; you may read that portion.

Mr. Downing: The instrument I have already referred to reads: "In consideration of the stipulation herein named and of the forty-five and fifty-one hundredths dollars premium the Milwaukee Mechanic's Insurance Company does insure Octavia Hammond, Ewell Toobert and Marcella Toobert for the term of three years from the 22nd day of January, 1946 at noon to the 22nd day of January, 1949, at noon against all loss or damage by fire, except as hereinafter provided, to an amount not to exceed \$7,000 of the following described property while located and contained as described herein and not elsewhere, to-wit: This policy covers the following described property located at 422, 422½, 422¼, 422¾, and 424 East 15th Street, Los Angeles, California."

That is the only material portion of it. Now, that is all.



(Testimony of Ewell Toobert.)

Cross Examination

By Mr. Hirst:

Q. When you first made arrangements with Mr. Hammond here to rent the whole premises or to purchase—

A. Yes; I sold it. That is right. [125]

Q. —to purchase the premises on a payment of \$150.00 per month—

A. At \$17,500, to pay \$150.00 a month, no down payment.

Q. —did you, or did Mr. Hammond go with you, at all to the OPA office?           A. No.

Q. File any statement?

A. No. I turned over, right as we agreed, I turned over the slips from the OPA. I says, “Now, this is yours and take care of it.”

Q. What slips are you referring to, Mr. Toobert?

A. I am referring to the OPA registrations.

Q. Copies of these registrations here?

A. Exactly, exactly.

Q. I will let you look at them again just to be sure. Are these the ones here?

A. These are the ones; yes, sir.

Q. Did you state anything to Mr. Hammond in connection with the turning over of those documents?

A. I turned them over. I says, “Here is the OPA registration slips and from now on it is yours.”

Q. Did you go to the OPA office?           A. No.

(Testimony of Ewell Toobert.)

Q. To find out if you were entitled to charge him \$150.00 or not? [126]

A. No; I did not go.

Mr. Downing: Just a minute. May I move to strike that answer out for the purpose of an objection?

The Court: You may object. Proceed.

Mr. Downing: The objection is made on the ground that the question assumes that the OPA had any right to impose any restriction upon the amount which he might charge upon the sale of the property; and further, upon the fact there isn't any evidence here to indicate what the maximum rental was on all this property.

The Court: Overruled.

Q. By Mr. Hirst: You state you did not go?

A. No, sir.

Q. Did you send Mr. Hammond to find out if that amount was proper?

A. No. Where there is no down payment paid, so this was the arrangement.

Q. Every month that Mr. Hammond paid you that money in what form did he pay it to you?

A. Cash.

Q. He paid it to you in cash?

A. That is right.

Q. Not by check or money order or anything else? A. No.

Q. Did you give him any receipt for that money?

A. I didn't give him. We were just waiting until she will sign the contract, Mrs. Octavia, and

(Testimony of Ewell Toobert.)

then we will draw it and I will give him acknowledgment of the money that he paid then. I have never missed a month.

Q. That first arrangement was made in July of 1945? A. 1945.

Q. But he was to buy it for \$17,500, is that right? A. Sir?

Q. That first arrangement to purchase it was in July of 1945, is that correct?

A. That is right.

Q. And the understanding was at that time that the name of the title holder would be Octavia Hammond? A. Exactly.

Q. And you were waiting for her to come out here from Texas? A. That is right.

Q. And she didn't come out from Texas, did she? A. I don't think so.

Q. You don't think so? A. I don't know.

Q. But you continued to accept the \$150.00 a month for a full year from him?

A. A full year from him on account of that purchase price. [128]

Q. Without giving him any kind of a receipt whatever for the money?

A. No; I didn't. No.

Q. Is that the way you do business generally?

A. That is not the way I do business, and I didn't give him no receipt. He didn't ask me for no receipt and I didn't give him no receipt.

Q. Isn't it a fact that you were operating this property yourself and that you put Mr. Hammond in there as agent? A. No.



(Testimony of Ewell Toobert.)

Q. As he has admitted in his answer on file in this case?

A. No. That cannot be because I didn't do it.

Q. You did not do it?

A. No, sir. And Mr. Hammond will not say that because he will not—

Q. After the year was up and you took \$150.00 a month from him—

A. That is right.

Q. —how much did you charge him after that first year? You charged him \$125.00?

A. \$125.00. He told me this was the OPA ceilings and he will pay me \$125.00. I agreed with that.

Q. How many rental units are there there? [129]

A. Well, there is four houses at one place and then there is a five rooms and downstairs, and was a three-room apartment and two-room apartment and a single room, as far as I can recollect.

Q. Do you recall, in addition to that visit that you went to Mrs. Hildreth's apartment after the fire and stated that you were the owner at that time—

A. That is right.

Q. —do you recall of having gone out there on other occasions and making any similar statements?

A. No. Later I went with a prospective buyer. I also offered Mrs. Davis, in case she wants to buy it, I will give her a reasonable down payment.

Q. Do you know when that was? A. No.

Q. You don't remember when that was?

A. No; I don't remember.

Q. Was it in 1947 or '46?

A. Must have been in 1947.

(Testimony of Ewell Toobert.)

Q. In 1947?           A. In 1947.

Q. What part of 1947?

A. About the first part.

Q. First part of 1947?

A. About the first part of 1947. [130]

Q. You were offering to Mrs. Davis?

A. I cannot recall exactly, but it was—

Q. Well, what is your best recollection?

A. It was—I cannot remember exactly, but I remember that I offered her.

Q. Can you state whether or not it was in the month of October, 1946?

A. October, 1946; it might have been. I don't think so. No; it must have been later.

Q. And how much later than that?

A. I am quite sure that was in '47 but I wouldn't swear to that.

Q. You were not sure what part of 1947?

A. No; I am not sure, but I know that was in 1947.

Q. Was it the first half of 1947?

A. Oh, yes.

Q. Are you sure of that?           A. Surely.

Q. All right. At the time you talked to her you identified yourself as the owner; isn't that a fact?

A. That is right.

Q. And you told her that if she would like to buy the apartment she was in you would be glad to sell it to her?           A. That is right.

Q. You left her an address where she could reach you? [131]           A. That is correct.

(Testimony of Ewell Toobert.)

Q. Isn't it a fact that, at the same time, you were receiving \$125.00 a month from Mr. Hammond pursuant to this oral arrangement for purchase?

A. No. The purchase was \$150.00.

Q. I am talking about the latter part of the time.

A. This \$150.00 was on the purchase price. Then after he had said he was not going through with the deal, he said, "I will pay you, if you want me to I will pay you \$125.00. The only benefit I will have is I have some relatives coming in from Texas and if I have a vacancy I can put them in it."

Q. He cancelled the purchase agreement, did he?

A. Exactly.

Q. And from that time when you started receiving \$125.00 it was merely as a lease arrangement?

A. Merely as a lease. And he told me also that any time you say I will give it up.

Q. Do you have any financial interest whatever in the Excell Real Estate Corporation?

A. No, sir.

Q. Does your wife have any interest in it?

A. No, sir.

Q. Are you a director or officer?

A. No, no, no; nothing at all.

Q. You did not know that these people were paying [132] \$40.00 a month for apartments?

A. No; I didn't know.

Mr. Downing. Just a minute. Objected to as immaterial.

The Court: Overruled. He said he didn't know.



(Testimony of Ewell Toobert.)

Q. By Mr. Hirst: You said you didn't know?

A. I didn't know.

Q. You heard Mrs. Davis testify that she called your attention to that fact?

A. I had nothing to do with it. If she called my attention, I had nothing to do with it; she had to talk to Mr. Hammond. I never received the rent. I never know what he was getting. I can swear to it.

Q. Did you talk to Mr. Hammond?

A. What?

Q. Did you talk to Mr. Hammond at all after he had talked to Mrs. Davis?

A. Have I talked to him? I don't remember whether I did. I don't remember.

Q. Did you ever have occasion that you talked with him as to whether or not he was complying with the OPA law in charging rents?

A. No, no. I knew he was going to take care of it.

Mr. Hirst: I think that is all, your Honor.

Mr. Downing: There is one further question.

Redirect Examination

By Mr. Downing:

Q. Mr. Toobert, are you familiar with the installation of certain concrete and cement work in the premises there?

A. If I am familiar with it?

Q. Yes.           A. Yes, sir.

Q. About when was that work done?

A. That work was done either in '46 or in the beginning of '47.

(Testimony of Ewell Toobert.)

Q. After the work was done did you have anything to do with the paying for it?

A. If I had nothing to do—

Q. I asked you if you did have anything to do with paying for it? A. Yes, sir; I paid it.

Q. You paid it? A. Yes, sir.

Q. Do you know the amount of that?

A. I paid it because at that time I applied for a bigger loan and they withhold a thousand dollars for me to do certain work.

Q. You mean the party from whom you were seeking to get a loan on the property required the work done? A. R. E. Allen, the same one.

Q. And then you caused the work to be done and paid for it, is that it?

A. Exactly. He has got that receipt for it.

Mr. Downing: That is all.

### Recross Examination

By Mr. Hirst:

Q. In other words, this work that Mr. Hammond has testified he did was done pursuant to your instruction, wasn't it, in order to comply with the requirements of this loan company?

A. I don't know.

Q. Well, that was the work which you are referring to, the cement work which he did, etc.; that was the work which you paid for?

A. That was the work that I paid for.

Q. That was not the work that you paid for?

A. That is the work that I paid for.

(Testimony of Ewell Toobert.)

Q. Was it done under your direction or did he do it?      A. No; that was on the price agreed.

Q. You agreed with Mr. Hammond that he was to do it, to be a certain given price?

A. Right.

Q. How much was that price?

A. It was—I don't recollect how much it was but it was over a thousand dollars. [135]

Q. It was over a thousand dollars. You stated it was either the latter part of '46 or the first part of '47?      A. Yes, sir.

Q. How did you happen to negotiate for him to do the work? Did you go to him or did he come to you?      A. Well, I went to him.

Q. Just tell us what your arrangements were with him.      A. I went to him.

Q. All right; what did you tell him?

A. That I have to do this and this work.

Q. What did you tell him you had to do? Essentially, what was the principal work?

A. Well, it had to be done. The foundation had to be made and porches had to be rebuilt.

Q. That is the principal work?

A. And put in some steps in the front and in the back.

Q. What else did you tell him, as meaning what else did you tell him had to be done?

A. And then painted the houses outside with two coats of paint.

Q. Did you ask him to do it or did he offer to do it?      A. Offered to do it.



(Testimony of Ewell Toobert.)

Q. What did he offer to do it for?

A. That is what I don't remember, how much it was. [136]

Q. He did not offer to do it for nothing, did he?

A. It was over a thousand dollars. The receipt, Mr. Allen has got the receipt, because he withheld a thousand dollars until I will have this work complied with, and then he sent out his inspector and it was okayed, and then they brought him a bill and then he gave me the money.

Q. Mr. Allen is the mortgagee?

A. He is 229 South Broadway.

Mr. Downing: Is it south or north?

The Witness: North Broadway; R. E. Allen.

Q. By Mr. Hirst: When did Mr. Hammond complete the work? How long after you told him or asked him to do it or he offered to do it did he complete it?

A. It took him about two months.

Q. Did he do it himself or did he hire men to help him? A. He hired, hired people.

Q. Did you pay him all at one time?

A. No.

Q. Or did you pay him in installments?

A. No; I paid him. I paid him a part, then I paid him the balance. It was all paid in full.

Q. Did you instruct him to charge the tenants more money? A. No, sir.

Q. In order to pay off this thousand dollars?

A. No, sir. No, sir; I never mentioned it or anything. He didn't mention it to me and I didn't mention it.

(Testimony of Ewell Toobert.)

Q. You never mentioned it to him?

A. He didn't mention it to me and I didn't mention it to him.

Q. Actually, he was not putting up any money himself?

A. Well, I wouldn't say that he didn't put up some on some other occasions. He spent some money there and then he paid the utilities.

Q. That was when he was under contract to buy the place, though?      A. Yes.

Q. Once he became the lessee there he didn't put any more money in himself?

A. No. He just kept on paying the utilities.

Q. I am talking about improvements to the property.

A. No. I didn't pay nothing except just when I raised the mortgage and they required that.

Q. You paid him in full, did you?

A. Yes, sir.

Mr. Hirst: That is all.

### Cross Examination

By Mr. Sinclair:

Q. Mr. Toobert, as a matter of fact that paint was paid for at the North Broadway street address, and this little item [138] of lumber bill which is signed by Jack Hammond's invoice made out to you, was that in addition?

A. No; that was included.

Q. Oh, I see; that was included.

A. That was included.

(Testimony of Ewell Toobert.)

Q. Now, can you give us the names of any other people that you bought materials from?

A. I didn't buy none. I had nothing to do with the buying part.

Q. In other words, Mr. Hammond—

A. Mr. Hammond, whatever he spent that was his business.

Q. That is what I wanted to bring out. That is all from this witness.

A. In fact, on this bill, I didn't charge this bill to Mr. Hammond. I paid this bill also. I think I have.

Q. You paid this?           A. Yes.

Q. You paid the paint bill at North Broadway?

A. I think I paid it. I believe I paid it but I couldn't say definitely. Maybe he paid it.

Mr. Sinclair: That is all.

The Court: That is all.

Mr. Hirst: Just one question:

Q. Actually, you did not purchase any of the materials?           A. No. [139]

Q. You left that up to him but you paid for it?

A. That is it exactly.

Mr. Hirst: That is all.

The Court: You referred to turning over to Mr. Hammond certain OPA papers. What were those?

The Witness: Those are the registration copies.

The Court: Did you turn them over to him?

The Witness: Yes, sir.

The Court: When did you do that?

The Witness: When we made the deal I turned them over to him.



(Testimony of Ewell Toobert.)

The Court: You knew what they were, then, at that time?

The Witness: Yes, sir.

The Court: When you turned them over to Hammond he knew what they were?

The Witness: I turned them over to him.

The Court: What were those papers?

Mr. Hirst: These are photostats of them, your Honor. I showed the witness so he was certain that they were the ones. I might advise the court that under the regulations, when the registration is originally filed with the agency, the then landlord receives back a landlord's copy of that registration. This is the official one that is left with the agency. The agency keeps the original and the present tenant at that time also gets a copy, so there are actually [140] three. It is in triplicate. The regulation makes it a further duty on the landlord that if he transfers the property, that he transfer also all the records relating to maximum rents, including the registration statement.

The Court: And those are the ones he said he turned over. All right; anything further?

Mr. Downing: That is all.

Mr. Sinclair: Just one question:

Q. Mr. Toobert, do you know what the total price, the total costs of the improvements were for this property? Do you know what the total price for the improvements were?

A. What we agreed on.

Mr. Downing: What improvements?

(Testimony of Ewell Toobert.)

Mr. Sinclair: That he has been relating.

Mr. Downing: Do you mean the bills he paid?

Mr. Sinclair: For all of the improvements. He stated he did not pay some of them, counsel, and I want to know if he knows what the total price was of all the improvements on the place.

Q. Do you know?

A. At this occasion when he took this contract, that is what I paid him. It was over a thousand dollars. That included the work and the materials. It wasn't itemized.

Q. How did you pay it, in cash or what?

A. In cash. [141]

Q. Did you get a receipt?                      A. Sir?

Q. Did you get a receipt from him?

A. Yes, sir; I got a receipt.

Q. Do you have that receipt?

A. I haven't got it but I can produce it. Mr. Allen has got the receipt; and, in fact, I took this, a copy, and I turned it in to my income tax man. I had to have that receipt.

Mr. Sinclair: That is all.

Mr. Downing: That is all.

Mr. Sinclair: I will call Mr. Hammond for a few rebuttal questions.

Mr. Downing: That is all on behalf of the defendant Toobert.

Mr. Sinclair: I will call Mr. Hammond for a question in rebuttal.

The Court: All right.

## JACK C. HAMMOND,

a defendant herein, called as a witness in his own behalf, having been previously sworn, was examined and testified as follows:

## Direct Examination

By Mr. Sinclair:

Q. Mr. Hammond, with reference to these improvements [142] how much did Mr. Toobert turn over to you? I mean did he give you a thousand dollars? A. No.

Q. How much was it that he did turn over to you?

A. He gave me \$300.00. He took me down to borrow some money and he co-signed, but he gave me merely \$300.00 and he paid this one bill here.

Q. How much is that bill?

A. You mean this one?

Q. Yes.

A. This one is 30.80, five gallons of thinner and five gallons of paint.

Mr. Sinclair: All right. That is all, counsel.

Mr. Downing: That is all.

Mr. Hirst: That is all.

The Court: That is all. You are excused.

Mr. Hirst: Your Honor, I have got a line-up of witnesses. That is all except for this line-up of witnesses there. I can call each one of them to testify to the same thing, namely, that there was no such arrangement made with these people. Your Honor, we did not know at the time what that other service was supposed to be. That is why I inter-



(Testimony of Jack C. Hammond.)

rupted. If you think the record is sufficiently clear, I will not call them.

The Court: No, I am not going to pass on this record [143] now. That is up to you lawyers. You try your lawsuit and then I will pass on what you put in.

Mr. Hirst: I will call each of these witnesses.

Mr. Sinclair: Your Honor, I don't know whether that is proper rebuttal or not. When they came up on their testimony in chief I asked them if they had paid any amount of money for anything else and they said no. That is all they could testify to, now.

Mr. Hirst: I want them to testify to exactly what improvements he made to each of their individual apartments which he states was done.

The Court: I think that is proper.

Mr. Hirst: Also, your Honor, I want them to deny—

The Court: Never mind, now. Go ahead and call the witnesses.

Mr. Hirst: Mrs. Patrick, first.

### IDA MAE PATRICK,

recalled as a witness by plaintiff, in rebuttal, having been previously sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Hirst:

Q. Mrs. Patrick, when you first moved into the apartment at 422 the latter part of October or No-

(Testimony of Ida Mae Patrick.)

vember, 1945 was there any arrangement with respect to Mr. Hammond that any of the money which you paid him for rent, [144] to use that to pay for repairing the premises?      A. It was not.

Q. There was no conversation at all, was there, as to that?      A. No conversation to that effect.

Q. What, if anything, has Mr. Hammond done to repair your premises or your apartment since you have moved in there?

A. Only fixed the porch and steps.

Q. That is all?

A. Put a coat of paint on the outside.

Q. How many coats?      A. One.

Mr. Hirst: One coat. All right; that is all. Mr. Gassaway.

#### JEFFREY GASSAWAY,

recalled as a witness by plaintiff, in rebuttal, having been previously sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Hirst:

Q. When you rented the apartment at 4221¼ East 15th Street from Mr. Hammond was there anything said by Mr. Hammond with respect to part of the money that you paid to be used to repair the premises or to improve them?

Mr. Sinclair: If the court please, I am going to object. You have already ruled on the matter. You permitted him to [145] call these witnesses to testify

(Testimony of Jeffery Gassaway.)

to what was done. He is now going into matters touched upon in chief. I am going to object to it.

The Court: He has already testified in chief.

Mr. Sinclair: He has already testified.

Mr. Hirst: Your Honor, I would like to clarify this. As far as testifying in chief, we testified that all the money was for rent, yes, but the defense has injected a claim of defense here which I am going to totally eliminate from any consideration, and that is that there was some express understanding. We had no way of anticipating that the defendant would raise that. He did not do it in his answer and therefore I did not ask him any direct questions with regard to the arrangement, the rent arrangement.

The Court: Yes; you did. You asked if any of this amount that they paid for rent was for anything else and they said no; just for rent. Each one of them said so. So it is in the evidence. You have asked permission to offer rebuttal evidence as to whether or not they made any improvements and what they consisted of. I allowed you to go into that because you did not go into that in chief. You are limited as to that, but you have already had them testify about the other. Go ahead.

Q. By Mr. Hirst: What, if anything, did Mr. Hammond do while you were a resident there to improve the premises from the time you moved in?

A. Well, not anything while I was there.

The Court: Talk louder.

A. Not anything while I was there.



Mr. Hirst: All right; that is all. Call Mrs. Hildreth.

PEARL HILDRETH,

recalled as a witness by plaintiff, in rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Hirst:

Q. From the time you moved in, Mrs. Hildreth, to the premises there at 422 $\frac{1}{4}$ , what, if anything, did Mr. Hammond do to improve the premises?

A. Nothing but fix the porch and the steps. That was last May. Of course, my windows are all out of my house right now.

Q. Were they ever repaired by Mr. Hammond?

A. They have never been repaired. They are all out now, every window.

The Court: You said, "fix the porch." Just what did he do?

The Witness: Fixed the cement porch and steps and put a coat of paint on.

Q. By Mr. Hirst: Put a coat of paint on the outside of the house?      A. In the front. [147]

Q. But nothing inside your place?

A. Nothing inside.

The Court: Did he do that in order to use the place, fix the porch and steps? Did that have to be done at that time?

The Witness: Well, the steps were torn down.

The Court: Torn down?

The Witness: Yes, sir.

(Testimony of Pearl Hildreth.)

The Court: How about the porch?

The Witness: Well, that was in bad condition also. You could trip on it.

The Court: Trip on it. All right; go ahead.

Mr. Sinclair: Just one question.

Cross Examination

By Mr. Sinclair:

Q. Mrs. Hildreth, as a matter of fact those screens and windows were put in by some family and they broke them out again.

A. No. There is no screens there. They are all torn up. There have been no new screens today in that house.

Mr. Sinclair: No other questions.

The Court: All right; that is all. Call your next witness. Hurry up.

Mr. Hirst: Mrs. Coleman. [148]

(Testimony of Ernestine Coleman.)

ERNESTINE COLEMAN,

recalled as a witness by plaintiff in rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Hirst:

Q. At 422<sup>3</sup>/<sub>4</sub> East 15th Street, Mrs. Coleman, as to Mr. Hammond, what, if anything, has he done to repair or improve the premises since you have moved in there?

A. He fixed the steps, concrete steps, and put a coat of paint on the outside?

(Testimony of Pearl Hildreth.)

Q. How about inside your place?

A. I done that. I improved that myself. I painted, myself, on the inside.

Q. Has he done anything to the windows and screens?           A. No.

Mr. Hirst: All right; that is all.

Cross Examination

By Mr. Sinclair:

Q. Mrs. Coleman, when you first moved in were any of these people living there?

A. I beg pardon?

Q. When you moved into this place was Mrs. Patrick, Mrs. Hildreth, or any of the others now in the court living there?

A. No. It was white owned then. I was the first one [149] moved into the court.

Mr. Sinclair: Okay.

Mr. Hirst: Mrs. White.

BERDIE MAE WHITE,

recalled as a witness by plaintiff, in rebuttal, having been previously sworn, was examined and testified as follows:

Direct Examination

By Mr. Hirst:

Q. What, if anything, Mrs. White, has Mr. Hammond done to improve the apartment that you occupy?

A. Well, he painted the outside of the house



(Testimony of Berdie Mae White.)

and fixed the front steps.

Q. Anything inside your premises?

A. No.

Q. Windows, screens?

A. No. He fixed one window, you know, when that explosion was. Well, the window was cracked and he put another one in there, but there was an earthquake and it cracked and I still don't have no window.

### Cross Examination

By Mr. Sinclair:

Q. Mrs. White, when you moved in there who was living there?

A. I beg your pardon?

Q. When you moved in the premises that you occupy [150] which of the other witnesses here today were also at those premises?

A. Mrs. Coleman.

Q. Is that all?           A. That is all.

Q. And yourself?        A. That is all.

Mr. Hirst: Mrs. Davis.

### ETHEL DAVIS,

recalled as a witness by plaintiff, in rebuttal, having been previously sworn, was examined and testified as follows:

### Direct Examination

By Mr. Hirst:

Q. In your apartment at 424 East 15th Street what has Mr. Hammond done since you moved in to repair or to improve it?

(Testimony of Ethel Davis.)

A. He haven't done anything inside, but on the outside he did put one paint of coat, one coat of paint on the outside, and downstairs, the back stairway, on the way down at the bottom steps he put two little cement steps.

Mr. Sinclair: I can't hear you.

A. Downstairs at the back he put two cement steps at the bottom, and he painted the outside. He didn't do anything inside. There was already some there. There wasn't anything wrong with them when I moved there. There was [151] already some wooden steps there.

The Court: Could you use them?

The Witness: Yes; I could use them.

The Court: And he put two cement steps there?

The Witness: Yes; he did.

The Court: Is that all he did?

The Witness: That is all.

### Cross Examination

By Mr. Sinclair:

Q. Mrs. Davis, when you moved in there each of these witnesses were also living in those premises?

A. Well, everybody that is here was there when I moved there, and downstairs—

Q. I mean just the ones that are concerned with this action. Were you the last of this group that moved in? A. No. Mr. Hall moved last.

Q. No; of the ones that are party plaintiffs.

Mr. Hirst: If I am correct, counsel, they are

(Testimony of Ethel Davis.)

not party plaintiffs.

Mr. Sinclair: I don't think that is improper, your Honor, because the witnesses—

The Court: Go ahead, go ahead.

Q. By Mr. Sinclair: Mrs. Davis, will you answer that question? Were all of these people that are now sitting over there that are tenants under this action, were they [152] living there at the time you moved in? A. Yes; they was.

Mr. Sinclair: All right; that is all. I want to thank you.

The Court: That is all. You are excused.

Mr. Hirst: That is all.

The Court: Any further evidence?

Mr. Sinclair: No, your Honor. That is all.

The Court: We will take a recess now until 10:00 o'clock tomorrow morning, at which time you may appear and argue and submit the case to the court.

Mr. Hirst: Thank you, your Honor.

(Whereupon, an adjournment was taken until 10:00 o'clock a.m. of the following day, Tuesday, March 23, 1948.) [153]

Los Angeles, California,

Tuesday, March 23, 1948, 10:00 a.m.

The Court: I wish to state, counsel, before we commence argument, that while I do not want to hurry you, I have a case that they just brought in to me to try following this and today is the only day I have; so we should consume as little time as



we may in this argument. I am not trying to limit you, I want you to understand.

Mr. Sinclair: I think the facts are simple enough that it would not require a great deal of summation.

The Court: I do not want to hurry you; you understand that, but they just brought this case in here and wanted me to hear another case.

Mr. Hirst: As far as I am concerned, your Honor, if other counsel are willing, I will waive argument. Your Honor heard the case.

The Court: No; I want you to argue it. I want you to argue it because you have a question here of the application of the one-year statute. I want to hear you on it. I told them that I had this afternoon if I got through with this argument in this case.

You may proceed, then.

(Argument of counsel omitted from transcript.)

The Court: The first proposition to be considered here is whether or not this one-year statute of limitations applies [155] under the record before the court. We have two subdivisions of Section 205 of the National Act relating to renting and collecting of rent for living purposes. Under Section 205(a) Congress has set the power in the Administrator to regulate and fix maximum rents of premises which are to be used for living purposes. No provision of limitations whatever is stated in that section as to when the Administrator may maintain such an action.

We refer then to Section 205(e), which it is contended here by the defendant Hammond is applicable, providing a one-year limitation to bring actions. It will be observed from a study of that subdivision it relates to actions brought by the individual and not by the Administrator. There is a distinction, clearly and expressly, between those two subdivisions. One relates to the Administrator bringing the action, upon which no limitation by Congress is placed within which he must maintain his character of action. The other is a limitation of one year which relates to the person who is seeking, himself, in an action to collect the overcharges, and it provides for treble damages, if necessary, and attorney's fees.

Now, I gather from the remarks made by the Supreme Court in that Tenth Circuit Court of Appeals case that they are clearly informing us as to the distinction between these two sections; and whether they had or not, my judgment is [156] that they are different, separate, and distinct circumstances under which we must function in determining whether or not there has been an overcharge of the maximum amount made by law in renting premises for living purposes. I think they are separate and distinct. 205(e) does not apply here and there is no limitation to bringing this action by the Administrator.

Now we come to the next question: What does this evidence show as to whether there has been a violation of what we call a ceiling or maximum price of rent fixed by the Administrator on this

particular premises, regardless of who is the owner, regardless of who is operating it or who is collecting it or who has violated in collecting in excess of that ceiling price or maximum price. That is the spirit of this law.

Now, who was operating these premises when these people went in there to rent? The maximum rent was fixed by the Administrator at a maximum of \$18.00 a month, one at \$16.00 a month. Six of these people are involved here and set up in this complaint, and every one of them comes here and testifies that they were charged and they paid \$40.00. Those who paid \$40.00 a month which was imposed on them by these defendants up to a certain time, which I am going to refer to, functioned together and established liability up to a certain time, and then after a certain time, which I will [157] call attention to, Hammond kept on.

We find these people went there, they went in and they had been paying \$40.00 a month, and those who paid \$20.00 here, until I believe one month or so it was reduced. Hammond collected. Hammond says he bought the property on an oral agreement from Toobert, the real owner, who held the legal title, and therefore he was the owner and he is responsible. Toobert comes back and says, "No; I am not responsible. Hammond is responsible, although we have an absolutely void agreement to sell this property under the laws of California."

That is the purpose of the Statute of Frauds regarding the transfer of real property not in writ-



ing. That is the law, I suppose, of nearly every decision. I know it is in my home state up there, and I have held again and again that such transfers, not in writing, are void under the Statute of Frauds, and that was the purpose of it. So we are confronted here with a situation between these two defendants with regard to a transfer of this property. It does not make any difference whether he did transfer or not. The question is: What did he do. The question is: What did these two men do in dealing with these six tenants. They both exercised, without any question, control in the operation of those premises. They were over there working jointly up until, as I noted here on the evidence, September, [158] 1947. Thereafter Toobert walked out of the picture and Hammond functioned alone.

So that both are liable to these tenants for all the overcharges as set forth in this schedule in this complaint up until September, 1947, when they were working together, collecting the rents. Those defendants put in improvements. Every one of these six people testified that they had the understanding and told them they were paying nothing but rent, not to paint a house, not to fix up a window that is broken out, making it untenable, not fixing the steps or the porch. That is the duty of the party who rents, to keep those premises in living condition and the tenants do not have to pay them for it. You cannot avoid this law by saying: Oh, I had to make certain repairs to make it livable and therefore I deducted legally from these

overcharges. That is not the law and you cannot step around the law this way. If you did, you could never enforce the rent law at all.

They functioned there together. The legal title owner went there, saw these improvements being made and he was taking an interest in it. He turned it over to Hammond; Hammond was collecting the money; Hammond was to pay him so much money and paid him \$150.00 a month for a while and then he paid him \$125.00 a month. They were jointly working together and their tenants paid the bill, illegally, these [159] overcharges. That is the spirit of this law and that is what this evidence shows clearly. The preponderance of the evidence, gentlemen, upholds that conclusion in my mind.

Six people here came and said that when they rented it they said they were paying nothing but rent. Whether they were or not, it was the duty of those who are renting to those people to keep their place in tenable condition, and they can't deduct it from this illegal overcharge.

Now, I am not going to assess treble damages, but I am holding that both of these defendants are liable to these tenants for these overcharges set forth in this schedule which they have all testified they paid. Nobody has contradicted or said they did not pay it. Even these defendants who got the money, they do not deny that these six people paid it to them. I say they are both liable jointly until September, 1947, and thereafter Hammond conducted it alone and he is liable for the balance of it and costs. So you may prepare your findings

and present to me within five days from this date. You must remember there are no treble damages or no attorney's fees allowable here in this case at all, because I do not think it is warranted under this Statute. [160]

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### CERTIFICATE

I hereby certify that I am a duly appointed, qualified and acting official court reporter of the United States District Court for the Southern District of California.

I further certify that the foregoing is a true and correct transcript of the proceedings had in the above entitled cause on the date or dates specified therein, and that said transcript is a true and correct transcription of my stenographic notes.

Dated at Los Angeles, California, this 30th day of June, A. D., 1948.

/s/ ALBERT H. BARGION,  
Official Reporter.

[Endorsed]: Filed July 3, 1948.



[Endorsed]: No. 12030. United States Court of Appeals for the Ninth Circuit. Ewell Toobert, Appellant, vs. Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellee. Transcript of Record. Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed September 1, 1948.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

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United States Court of Appeals for the  
Ninth Circuit

No. 12030

EWELL TOOBERT,

Appellant and Defendant,

vs.

TIGHE E. WOODS, Housing Expediter, Office of  
the Housing Expediter,

Appellee and Plaintiff.

STATEMENT OF POINTS ON WHICH  
APPELLANT INTENDS TO RELY  
ON APPEAL

Comes now the appellant and defendant Ewell Toobert and hereby states that he intends to and will rely on appeal on the points stated in his Statement of Points on which Appellant Intends

to Rely on Appeal filed in the District Court, Southern District of California, Central Division, and which statement is a part of the certified type-written transcript of record filed herein on September 1, 1948, being pages 51, 52, 53 and 54 thereof, and appellant hereby expressly adopts such statement as his statements of the points on which he intends to rely in the Circuit Court of Appeals.

Dated September 20, 1948.

/s/ GEORGE W. DOWNING, JR.,  
Attorney for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed September 22, 1948. Paul P. O'Brien, Clerk.

